

3-25-2015

State v. Chernobieff Clerk's Record Dckt. 43112

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

DANIEL CHERNOBIEFF,

Defendant-Appellant.

Supreme Court Case No. 43112

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE GERALD F. SCHROEDER

ADA COUNTY PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

State of Idaho vs. Daniel J Chernobieff

Date	Code	User		Judge
9/20/2013	NCRM	PRADAMKD	New Case Filed - Misdemeanor	Magistrate Court Clerk
	PROS	PRADAMKD	Prosecutor assigned Ada County Prosecutor	Magistrate Court Clerk
	APNG	TCTONGES	Appear & Plead Not Guilty/ Deaton	Magistrate Court Clerk
	RQDD	TCTONGES	Defendant's Request for Discovery	Magistrate Court Clerk
	MFEX	TCTONGES	Motion for Extension of Time	Magistrate Court Clerk
	PLEA	TCTONGES	A Plea is entered for charge: - NG (118-8004 {M} Driving Under the Influence)	Magistrate Court Clerk
	BNDC	TCPARKTL	Bond Posted - Cash (Receipt 101704 Dated 9/20/2013 for 500.00)	Magistrate Court Clerk
	HRSC	TCROBIMD	Hearing Scheduled (CA- Clerk Bond Out Appearance 10/02/2013 03:00 PM)	Magistrate Court Clerk
9/23/2013	HRVC	TCROMENI	Hearing result for CA- Clerk Bond Out Appearance scheduled on 10/02/2013 03:00 PM: Hearing Vacated	Magistrate Court Clerk
	CHGA	TCROMENI	Judge Change: Administrative	Daniel L Steckel
	HRSC	TCROMENI	Hearing Scheduled (AC Pretrial Conference 10/23/2013 08:45 AM)	Daniel L Steckel
	HRSC	TCROMENI	Hearing Scheduled (Jury Trial 11/20/2013 08:15 AM)	Daniel L Steckel
	NOTH	TCROMENI	Notice Of Hearing	Daniel L Steckel
9/24/2013	ORDR	TCCHENKH	Order Extending Time for Filing Pre-trial Motions	Daniel L Steckel
10/4/2013	RSDS	TCCHRIKE	State/City Response to Discovery	Daniel L Steckel
	RQDS	TCCHRIKE	State/City Request for Discovery	Daniel L Steckel
10/23/2013	MMNH	TCCHENKH	Magistrate Minutes & Notice of Hearing	Daniel L Steckel
	MINE	TCCHENKH	Use JT date as 2nd PTC	Daniel L Steckel
	CONT	TCCHENKH	Hearing result for AC Pretrial Conference scheduled on 10/23/2013 08:45 AM: Continued	Daniel L Steckel
10/31/2013	MOTS	TCLANGAJ	Motion to Suppress	Daniel L Steckel
	RSDS	TCCHRIKE	State/City Response to Discovery / First Addendum	Daniel L Steckel
11/12/2013	HRVC	TCMILLSA	Hearing result for Second Pretrial Hearing scheduled on 11/20/2013 08:15 AM: Hearing Vacated	Daniel L Steckel
	HRSC	TCMILLSA	Hearing Scheduled (Motion to Suppress 01/10/2014 03:30 PM)	Daniel L Steckel
	NOTH	TCMILLSA	Notice Of Hearing	Daniel L Steckel
11/15/2013	OBJE	TCLANGAJ	State's Objection to Defendant's Motion to Suppress	Daniel L Steckel
11/19/2013	RSDS	TCROMENI	State/City Response to Discovery/ Second Addendum [unable to locate]	Daniel L Steckel
1/10/2014	CONT	TCJOHNCS	Continued (Motion to Suppress 02/04/2014 03:30 PM)	Daniel L Steckel

State of Idaho vs. Daniel J Chernobieff

Date	Code	User	Judge
2/4/2014	HRHD	TCJOHNCS	Hearing result for Motion to Suppress scheduled on 02/04/2014 03:30 PM: Hearing Held
	MISC	TCJOHNCS	Motion to Suppress Denied
	HRSC	TCJOHNCS	Hearing Scheduled (Jury Trial 04/15/2014 08:15 AM)
	NOTH	TCJOHNCS	Notice Of Hearing
2/19/2014	STCO	TCLANGAJ	Stipulation to Continue Jury Trial
2/27/2014	ORDR	TCJOHNCS	Order to Continue
	HRVC	TCJOHNCS	Hearing result for Jury Trial scheduled on 04/15/2014 08:15 AM: Hearing Vacated
	HRSC	TCJOHNCS	Hearing Scheduled (Jury Trial 05/08/2014 08:15 AM)
5/7/2014	MOTN	TCLANGAJ	Motion to Stay
5/8/2014	HRVC	TCJOHNCS	Hearing result for Jury Trial scheduled on 05/08/2014 08:15 AM: Hearing Vacated
	HRSC	TCJOHNCS	Hearing Scheduled (Sentencing 06/02/2014 02:30 PM)
	MMNH	TCJOHNCS	Magistrate Minutes & Notice of Hearing
6/2/2014	SMPO	TCJOHNCS	Supervised Misdemeanor Probation Order
	CAGP	TCJOHNCS	Hearing result for Sentencing scheduled on 06/02/2014 02:30 PM: Court Accepts Guilty Plea
	WHJD	TCJOHNCS	Withheld Judgment Entered (I18-8004 {M} Driving Under the Influence)
	STAT	TCJOHNCS	STATUS CHANGED: closed pending clerk action
	PROB	TCJOHNCS	Probation Ordered (I18-8004 {M} Driving Under the Influence) Probation term: 1 year 0 months 0 days. (Misdemeanor Supervised)
	PROB	TCJOHNCS	Probation Ordered (I18-8004 {M} Driving Under the Influence) Probation term: 1 year. (Misdemeanor Unsupervised)
	SNPF	TCJOHNCS	Sentenced To Pay Fine 1197.50 charge: I18-8004 {M} Driving Under the Influence
	CBTF	TCJOHNCS	Cash Bond to Fines. Appearance - Charge: I18-8004 {M} Driving Under the Influence
	JAIL	TCJOHNCS	Sentenced to Jail or Detention (I18-8004 {M} Driving Under the Influence) Confinement terms: Jail: 365 days. Suspended jail: 355 days. Credited time: 1 day.
	OSDL	TCJOHNCS	Order Suspending Drivers License Driver License 365 Days
	RESR	TCJOHNCS	Restitution Recommended by the Prosecutor's office. 140.00 victim # 1
	RESR	TCJOHNCS	Restitution Recommended by the Prosecutor's office. 100.00 victim # 2

State of Idaho vs. Daniel J Chernobieff

Date	Code	User		Judge
6/2/2014	WPOG	TCJOHNCS	Written Plea Of Guilty	Daniel L Steckel
	NDRS	TCOLSOMC	Notice of Defendant's Responsibilities after Sentencing	Daniel L Steckel
	ORDR	TCJOHNCS	Order for Restitution and Judgment	Daniel L Steckel
	ORDR	CCJOHNLE	Order Releasing Cash Bond	Gerald Schroeder
6/3/2014	VOIR	TCPAANMR	Voided Receipt (Receipt# 58226 dated 6/2/2014)	Daniel L Steckel
6/10/2014	BNDV	CCBOYIDR	Bond Converted (Receipt number 61924 dated 6/10/2014 amount 500.00)	Daniel L Steckel
6/12/2014	APDC	TCOLSOMC	Appeal Filed In District Court	Daniel L Steckel
	NOTA	TCOLSOMC	NOTICE OF APPEAL	Daniel L Steckel
	CAAP	TCOLSOMC	Case Appealed:	Daniel L Steckel
	STAT	TCOLSOMC	STATUS CHANGED: Reopened	Daniel L Steckel
	CHGA	TCOLSOMC	Judge Change: Administrative	Michael McLaughlin
	NOSP	TCPRESCS	Notification Of Subsequent Penalties (DUI)	Michael McLaughlin
6/19/2014	MISC	TCOLSOMC	Estimated Cost of Appeal Transcript	Michael McLaughlin
6/23/2014	NOTA	TCWRIGSA	Amended NOTICE OF APPEAL	Michael McLaughlin
6/24/2014	NOTR	CCNELSRF	Notice Of Reassignment	Gerald Schroeder
6/26/2014	NOTC	TCCHRIKE	Notice of Payment of Estimated Cost of Appeal Transcript	Gerald Schroeder
7/31/2014	NOTC	TCCHRIKE	Notice of Lodging Appeal Transcript	Gerald Schroeder
8/14/2014	ORDR	CCNELSRF	Order Governing Procedure on Appeal	Gerald Schroeder
8/19/2014	ASAE	TCLANGAJ	Alcohol / Substance Abuse Education Complete / (32 hours)	Gerald Schroeder
8/22/2014	NOTC	CCNELSRF	Notice of Filing Transcript on Appeal	Gerald Schroeder
9/19/2014	BREF	TCCHRIKE	Appellant's Brief	Gerald Schroeder
10/17/2014	BREF	TCOLSOMC	Respondent's Brief	Gerald Schroeder
11/4/2014	CSAC	TCWRIGSA	Community Service Completed	Gerald Schroeder
11/19/2014	HRSC	CCNELSRF	Hearing Scheduled (Oral Argument on Appeal 01/08/2015 02:30 PM)	Gerald Schroeder
	NOTC	CCNELSRF	Notice of Hearing 01/08/15 @ 2:30 pm	Gerald Schroeder
1/8/2015	DCHH	TCPOSELM	Hearing result for Oral Argument on Appeal scheduled on 01/08/2015 02:30 PM: District Court Hearing Held Court Reporter: Kim Madsen Number of Transcript Pages for this hearing estimated: 50 Pages or Less	Gerald Schroeder
2/11/2015	DEOP	DCABBOSM	Opinion on Appeal	Gerald Schroeder
3/25/2015	NOTA	TCKEENMM	NOTICE OF APPEAL	Gerald Schroeder
	APSC	TCKEENMM	Appealed To The Supreme Court	Gerald Schroeder
	NOCA	TCKEENMM	Notice Of Change Of Address	Gerald Schroeder
	AFPD	TCKEENMM	Application For Public Defender	Gerald Schroeder

Date: 7/9/2015

Fourth Judicial District Court - Ada County

User: TCWEGEKE

Time: 10:00 AM

ROA Report

Page 4 of 4

Case: CR-MD-2013-0013271 Current Judge: Gerald Schroeder

Defendant: Chernobieff, Daniel J

State of Idaho vs. Daniel J Chernobieff

Date	Code	User		Judge
3/25/2015	NOTA	TCCHRIKE	NOTICE OF APPEAL	Gerald Schroeder
	APSC	TCCHRIKE	Appealed To The Supreme Court	Gerald Schroeder
4/2/2015	ORDR	CCNELSRF	Order Denying Application for Public Defender	Gerald Schroeder
4/8/2015	ORPD	CCJOHNLE	Order Appointing Public Defender	Gerald Schroeder
6/2/2015	MOTN	TCWEGEKE	Motion to Quash Order of Appointment	Gerald Schroeder
6/9/2015	ORDR	CCNELSRF	Order)Motion to Quash Order of Appointment)	Gerald Schroeder
	ORPD	CCNELSRF	Order Appointing Public Defender	Gerald Schroeder
7/8/2015	NOTC	TCWEGEKE	Notice of Transcript Lodged - Supreme Court No. 43112	Gerald Schroeder

000005

Idaho State Police - Uniform Citation

In the court designated below the undersigned certifies that he/she has just and reasonable grounds to believe and does believe that on:



Citation #:

ISP0238021

Date/Time: **09/12/2013 12:58 AM**

DR#: **B13002848**

IN THE DISTRICT COURT OF THE **4TH**

JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE

COUNTY OF **ADA**

STATE OF IDAHO

ELMD 2013-13271

VIOLATOR

Last Name: **CHERNOBIEFF**

MI: **J**

First Name: **DANIEL**

DOB: [REDACTED]

Hm. Address: [REDACTED]

Hm. Phone: [REDACTED]

City: **BOISE**

State: **ID**

Zip: **8370600000**

Height: **603** Weight: **180** Sex: **M** Eyes: **HAZ** Hair: **RED**

DL#: [REDACTED] DL State: **HI** Lic. Expires: **2017**

Class: **3**

Hazmat: **N** GVWR 26001+: **N** 16+ Persons: **N**

Commercial vehicle driven by this driver: **N**

Bus. Name:

Bus. Addr.:

Bus. Phone:

REGISTRATION

Yr. Veh: **1993**

Veh. Lic. #: **1A5K247**

State: **ID**

Make: **CHEV**

Model: **C15**

Color: **GRN**

Style: **LL**

VIN: **1GNEK18K5PJ375387**

Carrier US DOT #:

LOCATION

Upon a Public Street or Highway or Other Location Namely:

SOUTHBOUND MERIDIAN RD AT I-84

VIOLATIONS

Did commit the following Offense(s). In violation of State Statute,

Infraction Citation: **N**

Misdemeanor Citation: **Y**

Posted Speed:

Observed Speed:

Accident: **N**

Date/Time: **09/11/2013 11:11 AM**

Violation #1: **118-8004(1)(a) (M)**

DRIVING UNDER THE INFLUENCE

Violation #2: **RECEIVED**

SEP 20 2013

PCMD 9-20-13

Violation #3:

ADA County Clerk

Violation #4:

COURT INFORMATION

ADA COUNTY MAGISTRATE COURT

200 W FRONT ST. RM 1190

BOISE, ID 83702-7300

(208) 287-8900

Court Date: **09/11/2013 10:00 AM**

Court Time: **09/11/2013 10:00 AM**

Fine#1: **MUST APPEAR**

Fine#2:

Fine#3:

Fine#4:

In Custody

SIGNATURE

I hereby certify service upon the defendant personally on [X] 09/12/2013

Signature of Officer: _____

Officer name: **M SLY**

Officer ID: **3335**

Agency Name: **IDAHO STATE POLICE**

Witnessing Officer\Party: _____

Witnessing Officer\Party Address: _____

Department: _____

Serial #: _____

READ CAREFULLY

This is a MISDEMEANOR charge in which:

NOTE: If you fail to appear within the time allowed for your appearance, another charge of failure to appear may be filed and a warrant may be issued for your arrest.

1. You may be represented by a lawyer, which will be at your expense unless the judge finds you are indigent.
2. You are entitled to a trial by jury if requested by you.
3. PLEA OF NOT GUILTY: You may plead not guilty to the charge by appearing before the clerk of the court or the judge, within the time allowed for your appearance, at which time you will be given a trial date.
4. PLEA OF GUILTY: You may plead guilty to the charge by going to the clerk of the court, within the time allowed for your appearance, at which time you will be told if you can pay a fixed fine or whether it will be necessary for you to appear before the judge;
OR
You may have your fine determined by a judge at a time arranged with the clerk of the court, within the time allowed for your appearance.
5. You may call the clerk of the court to determine if you can sign a plea of guilty and pay the fine and costs by mail or over the internet by going to:
<http://courtpay.idaho.gov>

I plead guilty to the charges.

Defendant (if authorized by clerk of magistrate court) _____

MAIL TO:

ADA COUNTY MAGISTRATE COURT
200 W FRONT ST. RM 1100
BOISE, ID 83702-7300

000007

User: PRADAMKD



Photo Taken: 2013-09-12 01:42:51

Name: CHERNOBIEFF, DANIEL JAMES

Case #: ---

LE Number: 1053552

DOB:

Height: 602

SSN:

Weight: 195

Drivers License Number:

Drivers License State:

Sex: M Race: W Eye Color: GRN Hair Color: BLN Facial Hair:

Marks: ARM, RIGHT

Scars:

Tattoos:

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

STATE OF IDAHO, ADA COUNTY, MAGISTRATE DIVISION

PROBABLE CAUSE FORM

STATE OF IDAHO

vs. Daniel Chernobieff

PROSECUTOR W. Welsh

COMPLAINING WITNESS _____

CASE NO. MB-13-13271

CLERK Kristi Gardner

DATE 9/20/2013 TIME 840

CASE ID. _____ BEG. 84040

COURTROOM 203 END 84125

JUDGE

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> BEREZ | <input type="checkbox"/> MacGREGOR-IRBY |
| <input type="checkbox"/> BIETER | <input type="checkbox"/> MANWEILER |
| <input type="checkbox"/> CAWTHON | <input type="checkbox"/> McDANIEL |
| <input type="checkbox"/> COMSTOCK | <input type="checkbox"/> MINDER |
| <input type="checkbox"/> DAY | <input checked="" type="checkbox"/> OTHS |
| <input type="checkbox"/> GARDUNIA | <input type="checkbox"/> REARDON |
| <input type="checkbox"/> HARRIGFELD | <input type="checkbox"/> STECKEL |
| <input type="checkbox"/> HAWLEY | <input type="checkbox"/> SWAIN |
| <input type="checkbox"/> HICKS | <input type="checkbox"/> WATKINS |

- ☐ _____
- ☐ _____

STATUS

- ☒ STATE SWORN
- ☒ PC FOUND DUI
- ☐ COMPLAINT SIGNED
- ☐ AMENDED COMPLAINT SIGNED
- ☐ AFFIDAVIT SIGNED
- ☐ JUDICIAL NOTICE TAKEN
- ☐ NO PC FOUND
- ☐ EXONERATE BOND
- ☐ SUMMONS TO BE ISSUED
- ☐ WARRANT ISSUED
- ☐ BOND SET \$ _____
- ☐ NO CONTACT

- D.R. # _____
- ☐ DISMISS CASE
- ☐ IN CUSTODY

COMMENTS

- ☐ AGENT'S WARRANT
- ☐ RULE 5(B)
- ☐ FUGITIVE
- ☐ MOTION & ORDER TO CONSOLIDATE

☒ File Memo:

NO. 11 FILED
A.M. 11 P.M.

SEP 20 2013

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

JACOB D. DEATON, ISB #7470
LAW OFFICE OF JACOB D. DEATON, PLLC
950 W. Bannock, Suite 1161
Boise, Idaho 83702
Tel: (208) 685-2350
Fax: (208) 685-2351

Attorney for Defendant Chernnobieff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

v.

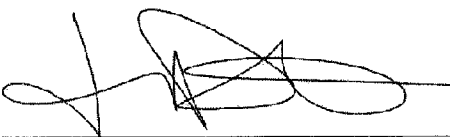
DANIEL CHERNNOBIEFF

Defendant.

)
)
) Case No. CR-MD-2013-0013271
)
) NOTICE OF APPEARANCE, ENTRY
) OF NOT GUILTY PLEA, AND
) DEMAND FOR SPEEDY JURY
) TRIAL
)

Jacob D. Deaton of the Law Office of Jacob D. Deaton, PLLC hereby enters his Notice of Appearance on behalf of the Defendant, Daniel Chernnobieff. The Defendant enters a plea of not guilty, and the Defendant also requests a speedy Jury Trial.

DATED this September 20, 2013.


JACOB D. DEATON
Attorney for Defendant

NOTICE OF APPEARANCE, ENTRY OF NOT GUILTY PLEA, AND DEMAND FOR
SPEEDY JURY TRIAL - 1

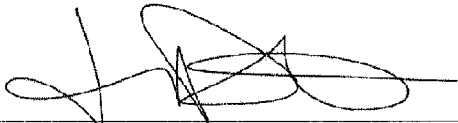
000010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 20, 2013, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Ada County Prosecuting Attorney
200 W. Front Street
Boise Idaho 83702
Fax: 208 287 7709

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile



JACOB D. DEATON

**NOTICE OF APPEARANCE, ENTRY OF NOT GUILTY PLEA, AND DEMAND FOR
SPEEDY JURY TRIAL - 2**

000011

NO. 11 FILED
A.M. P.M.

SEP 20 2013

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

JACOB D. DEATON, ISB #7470
LAW OFFICE OF JACOB D. DEATON, PLLC
950 W. Bannock, Suite 1161
Boise, Idaho 83702
Tel: (208) 685-2350
Fax: (208) 685-2351

Attorney for Defendant Chernnobieff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

v.

DANIEL CHERNNOBIEFF

Defendant.

)
)
)
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)
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)
)
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)

Case No. CR-MD-2013-0013271

REQUEST FOR DISCOVERY

TO: Ada County Prosecuting Attorney:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests discovery and inspection of the following information, evidence, and materials:

1. **STATEMENT OF THE DEFENDANT:** The Defendant requests copies of any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also, the substance of any relevant, oral statement made by the Defendant, whether before or after arrest to a peace officer, prosecuting attorney or the prosecuting attorney's agent. The Defendant also specifically

REQUEST FOR DISCOVERY - 1

000012

requests a copy of any tape recordings made by the officer(s) at the scene of the arrest, during transport to the jail or while at the jail.

2. **DEFENDANT'S PRIOR RECORD:** Request is made that the prosecuting attorney furnish the Defendant a copy of his prior criminal record, if any, as is now available or may become available to the prosecuting attorney in the future.

3. **DOCUMENTS AND TANGIBLE OBJECTS:** The Defendant requests that the prosecuting attorney permit the Defendant to inspect and/or copy and/or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are in the possession, custody or control of the prosecuting attorney and which are material to the preparation of the defense, or intended for use by the prosecutor as evidence at trial, or obtain from or belonging to the Defendant.

4. **REPORTS OF EXAMINATIONS AND TESTS:** The Defendant requests that the prosecuting attorney permit the Defendant to inspect and copy or photograph any results or reports of physical or mental examinations, including the alcohol influence report form if applicable, and, if scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody or control of the prosecuting attorney, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence.


5. **INTOXILYZER 5000:** If applicable, the Defendant requests a copy of the Intoxilyzer 5000 certification of the officer who operated the Intoxilyzer in this matter. In addition, please produce the Intoxilyzer 5000 printer card and the Intoxilyzer 5000 instrument operations log and maintenance records for three years prior to its use in this matter.

6. **STATE WITNESSES:** The Defendant requests that the state furnish to the Defendant a written list of the names and addresses of all persons having knowledge of relevant facts that may be called by the state as witnesses at the trial, together with any record or prior felony convictions of any such person which is within the knowledge of the prosecuting attorney. The Defendant also requests that the prosecuting attorney furnish any statements made by prosecution witnesses or prospective prosecution witnesses to the prosecuting attorney or the prosecuting attorney's agents or to any official involved in the investigatory process of the case.

7. **POLICE REPORTS:** The Defendant requests that the prosecuting attorney furnish to the Defendant reports and memoranda in possession of the prosecuting attorney which were made by police officers, including supplemental reports from assisting officers and dispatch log, and/or investigators in connection with the investigation or prosecution of the case.

8. **EXPERT WITNESSES:** The Defendant requests that the prosecuting attorney provide a written summary or report of any testimony the State intends to introduce pursuant to Idaho Rules of Evidence 702, 703 or 705 at trial or hearing. The summary provided must describe the witness's opinions, the facts and data for those opinions, and the witness's qualifications.

DATED this September 20, 2013.



JACOB D. DEATON
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 20, 2013, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Ada County Prosecuting Attorney
200 W. Front Street
Boise Idaho 83702
Fax: 208 287 7709

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile



JACOB D. DEATON

JACOB D. DEATON, ISB #7470
LAW OFFICE OF JACOB D. DEATON, PLLC
950 W. Bannock, Suite 1161
Boise, Idaho 83702
Tel: (208) 685-2350
Fax: (208) 685-2351

NO. 11 FILED
A.M. 11 P.M.

SEP 20 2013

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)
)
 Plaintiff,) Case No. CR-MD-2013-0013271
)
 v.) **MOTION FOR EXTENSION OF**
) **TIME FOR FILING PRE-TRIAL**
 DANIEL CHERNNOBIEFF) **MOTIONS**
)
 Defendant.)

COMES NOW the Defendant, Daniel Chernnobieff, by and through attorney of record, Jacob D. Deaton of the firm Law Office of Jacob D. Deaton, of Boise, Idaho, and moves this Court, pursuant to Idaho Criminal Rules, Rule 1 and Rule 12(d), for its Order extending the time for filing of pre-trial motions until twenty-eight (28) days following the State's complete compliance with its discovery obligations. This Motion is based on the fact that the 28-day rule of the Idaho Criminal Rules, Rule 12(d) has generally been formulated to apply in the District Court in felony cases after discovery has been fully completed in the Magistrate's Division. The requested extension of time will allow the parties time to complete discovery and thus determine whether Rule 12 motions are needed in the above-entitled action.

MOTION FOR EXTENSION OF TIME FOR FILING PRE-TRIAL MOTIONS - 1

000016

DATED this September 20, 2013.



JACOB D. DEATON
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 20, 2013, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Ada County Prosecuting Attorney
200 W. Front Street
Boise Idaho 83702
Fax: 208 287 7709

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile



JACOB D. DEATON

MOTION FOR EXTENSION OF TIME FOR FILING PRE-TRIAL MOTIONS - 2

000017

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA.

THE STATE OF IDAHO,
Plaintiff,

vs.

CHERNOBIEFF DANIEL JAMES
Defendant

NO. _____ FILED _____
A.M. _____ P.M. 2-

NOTICE OF COURT DATE ~~SEP 20 2013~~

AND
CHRISTOPHER P. RICH, Clerk
By MARSHA ROBINSON
DEPUTY

YOU ARE HEREBY NOTIFIED that you must appear before the Court Clerk,
between 25 September 2013 and 02 October 2013 excluding Saturdays, Sundays, and Holidays,

from 09:00AM to 03:00PM at the:

Ada County Courthouse
200 West Front Street
Boise, 83702

If you have been arrested for a Citation, This Notice of Court Date Supersedes any other Court Date for this case. If you have been given a date by the court you must keep those appearances, failing to do so will cause a warrant for arrest and forfeiture of bond.

You are further notified that if you fail to appear as specified herein, your bond
will be forfeited and a Warrant of Arrest will be issued against you.

BOND RECEIPT No: 986660

Charge: 18-8004 {M} DRIVING UNDER THE INFLUENCE

Bond Amount: \$ 500.00

Case #

Bond # 493873942

Bond Type: Court Pay

Warrant #:

Agency: CHERNOBIEFF, DANIEL JAMES

Insurance:

Bondsman:

Address: 1411 E. SYMPHONY CT
BOISE, ID 83706

2013 13271

This is to certify that I have received a copy of this NOTICE TO APPEAR.
I understand that I am being released on the conditions of posting bail and
my promise to appear in the court at the time, date, and place described in this notice.

DATED: 9/12/2013

DEFENDANT

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
MAGISTRATE DIVISION

200 W. Front Street, Boise Idaho 83702

STATE OF IDAHO,
Plaintiff.

vs.

Daniel J Chernobieff
1411 E Symphony Ct
Boise, ID 83706

Defendant.

Case No: CR-MD-2013-0013271

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

AC Pretrial Conference....Wednesday, October 23, 2013....08:45 AM
Judge: Daniel L Steckel

Jury Trial....Wednesday, November 20, 2013....08:15 AM
Judge: Daniel L Steckel

THE DEFENDANT SHALL BE **PERSONALLY PRESENT** AT BOTH THE PRE-TRIAL CONFERENCE AND / OR THE JURY TRIAL. FAILURE TO APPEAR AT EITHER THE PRE-TRIAL CONFERENCE OR THE JURY TRIAL WILL RESULT IN A **BENCH WARRANT** FOR THE DEFENDANT'S **ARREST**.

I HEREBY CERTIFY that the foregoing is a true and correct copy of this Notice of Hearing entered by the court and on file in this office. I further certify that copies of this notice were served as follows:

Defendant: Mailed _____ Hand Delivered _____ Signature _____
Clerk _____ Date _____ Phone () _____

Jacob D Deaton
950 W. Bannock, Ste. 1161
Boise ID 83702

Private Counsel: Mailed X Hand Delivered _____ Signature _____
Clerk KR Date 9/23 Phone () _____

Prosecutor: Interdepartmental Mail X ☒ Ada ☐ Boise ☐ Eagle ☐ G.C. ☐ Meridian
Clerk KR Date 9/23

Public Defender: Interdepartmental Mail _____
Clerk _____ Date _____

Other: _____

Mailed _____ Hand Delivered _____ Signature _____
Clerk _____ Date _____ Phone () _____

Dated: 9/23/2013

CHRISTOPHER D. RICH
Clerk of the Court

By: Kristi Robertson
Deputy Clerk

Cite Pay Website: <https://www.citepayusa.com/payments> Supreme Court Repository: <https://www.idcourts.us>

RECEIVED

SEP 20 2013

ADA COUNTY CLERK

NO. 924 FILED
A.M. P.M.

SEP 24 2013

JACOB D. DEATON, ISB #7470
LAW OFFICE OF JACOB D. DEATON, PLLC
950 W. Bannock, Suite 1161
Boise, Idaho 83702
Tel: (208) 685-2350
Fax: (208) 685-2351

CHRISTOPHER D. RICH, Clerk
By KEELEY CHENEY
DEPUTY

Attorney for Defendant Chernnobieff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

v.

DANIEL CHERNNOBIEFF

Defendant.

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Case No. CR-MD-2013-0013271

**ORDER EXTENDING TIME FOR
FILLING PRE-TRIAL MOTIONS**

Based upon the Motion filed herewith and for good cause appearing, IT IS HEREBY ORDERED AND THIS DOES ORDER that the time for filing pre-trial motions has been extended to twenty-eight (28) days following the State's complete response to Defendant's discovery requests, including audio and/or video.

DATED this 24 day of Sept 2013.
Magistrate Judge

ORDER EXTENDING TIME FOR FILLING PRE-TRIAL MOTIONS -1

000020

we

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of Sept., 2013, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Ada County Prosecuting Attorney
200 W. Front Street
Boise Idaho 83702
Fax: 208 287 7709

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Jacob D. Deaton
Law Office of Jacob D. Deaton
950 W. Bannock, Suite 1161
Boise, ID 83702
Fax: (208) 685-2351

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Clerk

ORDER EXTENDING TIME FOR FILLING PRE-TRIAL MOTIONS -2

000021

OCT - 4 2013

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney

Sarah Q. Simmons

Deputy Prosecuting Attorney

Magistrate Division, 200 W. Front Street, Room 3191

Boise, Idaho 83702

Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)

Plaintiff,)

vs.)

DANIEL JAMES CHERNOBIEFF,)

Defendant,)

Case No. CR-MD-2013-0013271

**STATE'S DISCOVERY
RESPONSE TO COURT**

COMES NOW, Sarah Q. Simmons, Deputy Prosecuting Attorney, in and for the County of

Ada, State of Idaho, and informs the Court that the State has complied with the Defendant's

Request for Discovery.

RESPECTFULLY SUBMITTED this 2 day of October 2013.

GREG H. BOWER

Ada County Prosecuting Attorney

Sarah Q. Simmons

Deputy Prosecuting Attorney

NO.
A.M.

OCT - 4 2013

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney

Sarah Q. Simmons

Deputy Prosecuting Attorney

Magistrate Division, 200 W. Front Street, Room 3191

Boise, Idaho 83702

Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

DANIEL JAMES CHERNOBIEFF,

Defendant.

Case No. CR-MD-2013-0013271

**STATE'S REQUEST
FOR DISCOVERY**

TO THE ABOVE NAMED DEFENDANT:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests Discovery and inspection of the following:

(1) Documents and Tangible Objects:

Request is hereby made by the prosecution to inspect and copy or photograph books, papers, documents, photographs, tangible objects or copies or portions thereof, which are within the possession, custody or control of the Defendant, and which the Defendant intends to introduce in evidence at trial.

(2) Reports of Examinations and Tests:

The prosecution hereby requests the Defendant to permit the State to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or

experiments made in connection with this case, or copies thereof, within the possession or control of the Defendant, which the Defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the Defendant intends to call at the trial when the results or reports relate to testimony of the witness.

(3) Defense Witnesses:

The prosecution requests the Defendant to furnish the State with a list of names and addresses of witnesses the Defendant intends to call at trial.

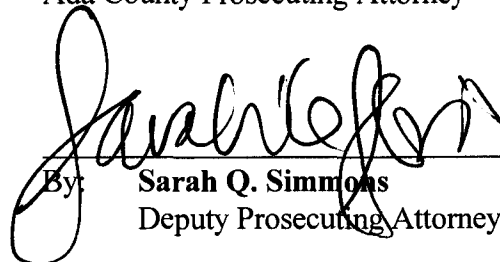
(4) Expert Witnesses:

The prosecution requires the defendant to provide a written summary or report of any testimony that the defense intends to introduce pursuant to Idaho Criminal Rule 16 (c)(4), including the facts and data supporting the opinion and the witness's qualifications.

(5) Pursuant to Idaho Code Section 19-519, the State hereby requests that the Defendant state in writing within ten (10) days any specific place or places at which the Defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

DATED this 2 day of October ~~September~~ 2013.


GREG H. BOWER
Ada County Prosecuting Attorney

By: 
Sarah Q. Simmons
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 3rd day of ~~September~~ October 2013, I caused to be served a true and correct copy of the foregoing document to: **Jacob Deaton, Attorney at Law, 950 W. Bannock, Suite 1161, Boise, ID 83702**, by the method indicated below:

☐ NOTIFIED AVAILABLE FOR PICK UP
☒ U.S. MAIL (Postage Prepaid)
☐ FAX TRANSMISSION
☐ HAND DELIVERY



OCT 23 2013

CHRISTOPHER D. RICH, Clerk
DEPUTY

STATE OF IDAHO,

Plaintiff,

VS.

CHERNOBIEFF, DANIEL

Defendant.

MAGISTRATE MINUTES / NOTICE OF HEARING
~~PRE-TRIAL MEMORANDUM~~

Case Number: CR-MD-2013-13271

Event Scheduled: _____ **FTC**

Judge: STECKEL Clerk: KC

Case Called: _____ ☒ In Chambers

- Interpreter:

☒ AC ☐ BC ☐ EA ☐ GC ☐ MC Simmons PD / Private DEATON

Defendant: ☐ Present ☒ Not Present ☐ In Custody ☐ PD Appointed ☐ PD Denied ☐ Waived Attorney

☐ Defendant failed to appear. Bond forfeited/ROR revoked. Bench Warrant issued. Bond \$

☐ Advised of Rights ☐ Not Guilty ☐ Guilty Plea / PV Admit ☐ Written Guilty Plea ☐ No Contact Order

☐ Bond \$ _____ ☐ Pre-Trial Release Order ☐ Provide _____ Evaluation

Auditing Blood Results - Use JT as 2nd Pte

☐ Release Defendant, This Case Only

NOTICE OF HEARING

☐ Sentencing on _____ at _____ am/pm w/ Judge _____

☐ Court Trial Conference on _____ at _____ am/pm w/ Judge _____

☒ Pre-Trial / Jury Trial on 11/20/13 at 815 am/pm w/ Judge STECKEL

 on at am/pm w/ Judge

☐ Contact the Ada County Public Defender, 200 W. Front St., Rm. 1107, Boise, ID 83702, telephone (208)287-7400.

You must appear as scheduled above. Failure to do so will result in a warrant being issued for your arrest, or default judgment may be entered if you are charged with an infraction.

ADA COUNTY COURTHOUSE, 200 W. FRONT ST., BOISE, ID 83702

I hereby certify that copies of this notice were served as follows:

Defendant: Hand Delivered ☐ Via Counsel ☐

Defense Atty: Hand Delivered ☒

Prosecutor: Hand Delivered ☒

CHRISTOPHER D. RICH, Clerk of the District Court

By: [Signature]
Deputy Clerk

Signature _____

Magistrate Judge (for Pre-Trial Memorandum)

DATED 10/23/13

000026
[REV 11-2012]

MAGISTRATE MINUTES

200
JDC
11/20
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JACOB D. DEATON, ISB #7470
LAW OFFICE OF JACOB D. DEATON, PLLC
6126 W. State Street
Boise, Idaho 83703
Tel: (208) 685-2350
Fax: (208) 685-2351

Attorney for Defendant Chernobieff

NO. 11-15 FILED
A.M. 11 P.M. 15

OCT 31 2013

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

11/1/13
Set for hearing
DIS

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-MD-2013-0013271
)	
v.	)	MOTION TO SUPPRESS
)	
DANIEL CHERNNOBIEFF)	
)	
Defendant.)	

COMES NOW the Defendant, Daniel Chernobieff, by and through his attorney of record, Jacob D. Deaton of the firm Law Office of Jacob D. Deaton, of Boise, Idaho, and moves this Court, to suppress the results of the blood test obtained in this case. The Defendant contends that the blood draw, conducted without a warrant, violated his Fourth Amendment rights under both the United States and Idaho Constitutions.

QUESTION PRESENTED

Did the State violate Defendant's rights under the Fourth Amendment of the U.S. Constitution when Trooper Comorosky ordered Defendant's blood to be involuntarily drawn without a warrant after Defendant refused to submit to a breathalyzer test where the State failed to demonstrate the existence of exigent circumstances that would justify an exception to the

general rule that the Fourth Amendment requires that the State obtain a warrant before conducting searches or seizures?

FACTS

The Defendant was stopped on September 11, 2013 by Trooper Ben Comorosky of the Idaho State Police. Following a DUI investigation, the police officer arrested the Defendant and took him to the Ada County Jail. The trooper contacted Ada County Prosecuting Attorney Scott Bandy to prepare a request for a search warrant. That prosecutor could not reach the on-call judge. Instead of waiting to receive a proper warrant, the trooper drew the Defendant's blood. No warrant was ever sought or obtained in this case.

ARGUMENT

The administration of a blood alcohol test constitutes a seizure of a person and a search for evidence subject to the Fourth Amendment, which prohibits unreasonable searches and seizures. Schmerber v. California, 384 U.S. 757, 767 (1966); Halen v. State, 136 Idaho 829, 833, 41 P.3d 257, 261 (2002); State v. Woolery, 116 Idaho 368, 370, 775 P.2d 1210, 1212 (1989). Searches and seizures conducted without a warrant are presumptively unreasonable. Schmerber, 384 U.S. at 770; State v. LaMay, 140 Idaho 835, 837-38, 103 P.3d 448, 450-51 (2004). To overcome the presumption, the State bears the burden of establishing the applicability of an exception to the warrant requirement. LaMay, 140 Idaho at 838, 103 P.3d at 451.

However, the Idaho Supreme Court has ruled on this issue and found that drivers who operate a motor vehicle on a highway impliedly consent to a blood draw. State v. Diaz, 144 Idaho 300 (Idaho 2007). In *Diaz*, the Idaho Supreme Court took up the issue "whether an involuntary blood draw violates federal or state constitutional protections in cases where no death or serious bodily injury is involved." *Id.* Since 2007, the State has relied upon *State v.*

Diaz for the proposition that Idaho's implied consent law justifies involuntary blood draws without a warrant, and without a showing of exigent circumstances on the part of the State. The *Diaz* Court reasoned that the implied consent under Idaho Code §18-8002 constitutes "consent" sufficient to fit within a well-recognized exception to the Fourth Amendment warrant requirement *Id.* at 741.

Since the *Diaz* decision, however, the U.S. Supreme Court has taken up the issue of the constitutionality of warrantless, involuntary blood draws in *Missouri v. McNeely* 569 U.S. ____ (2013). In *McNeely* the Court declared that "the Fourth Amendment will not tolerate adoption of an overly broad categorical approach that would dilute the warrant requirement where significant privacy interests are at stake." *Id.*

Thus, the *McNeely* decision trumps the Idaho Supreme Court's holding in *Diaz*. Despite the existence of an implied consent statute in Idaho, the Fourth Amendment requires that police obtain a warrant, in most circumstances. The State bears the burden on showing either (1) that a warrant was obtained, or (2) a sufficient exemption to the warrant requirement exists.

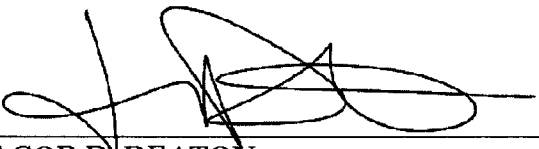
Idaho police agencies must comply with the new standard set forth in *McNeely*. In other contexts, the Idaho Supreme Court has observed that "State courts are at liberty to find within the provisions their constitutions greater protection than is afforded under the federal constitution as interpreted by the United States Supreme Court." *State v. Donato*, 20 P.3d 5, 135 Idaho 469 (Idaho 2001). In other words, "the United States Supreme Court establishes no more than the floor of constitutional protection." *Id.* (emphasis added.) Thus, Idaho may give more protections than granted under *McNeely*, not less.

The logical, and legal, application of this principle is that the State cannot justify the warrantless blood draw in this case by relying upon *Diaz*. As such, the correct rule for

determining whether Officer Rupert should have obtained a warrant before seeking an involuntary blood draw in this case is whether, given the totality of the circumstances, the natural dissipation of alcohol in the bloodstream of the defendant constitutes an exigency in this case "sufficient to justify conducting a blood test without a warrant." McNeely 569 U.S. at ____.

Absent a showing by the State of an exigency sufficient to justify conducting a blood test without a warrant, the Court should suppress the results of the blood test in this case.

DATED this October 31, 2013.



JACOB D. DEATON
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 31, 2013, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Ada County Prosecuting Attorney
200 W. Front Street
Boise Idaho 83702
Fax: 208 287 7709

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile



JACOB D. DEATON

NO. _____ FILED _____ P.M. 130
A.M. _____
OCT 31 2013
CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Sarah Q. Simmons
Deputy Prosecuting Attorney
Magistrate Division, 200 W. Front Street, Room 3191
Boise, Idaho 83702 Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
DANIEL CHERNOBIEFF,)
)
Defendant,)
_____)

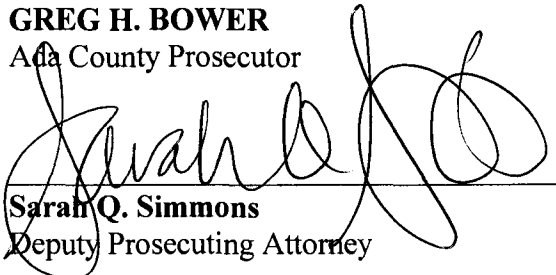
Case No. CR-MD-2013-0013271

**STATE'S FIRST
ADDENDUM TO
DISCOVERY RESPONSE
TO COURT**

COMES NOW, Sarah Q. Simmons, Deputy Prosecuting Attorney in and for Ada County,
State of Idaho, and informs the Court that the State has submitted an Addendum to Response to
Discovery.

RESPECTFULLY SUBMITTED this 29 day of October 2013.

GREG H. BOWER
Ada County Prosecutor



Sarah Q. Simmons
Deputy Prosecuting Attorney

(CHERNOBIEFF)
ADDENDUM TO DISCOVERY RESPONSE TO COURT, PAGE 1

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
MAGISTRATE DIVISION

200 W. Front Street, Boise Idaho 83702

STATE OF IDAHO,
Plaintiff.

vs.

Daniel J Chernobieff
1411 E Symphony Ct
Boise, ID 83706

Defendant.

Case No: CR-MD-2013-0013271

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Motion to Suppress....Friday, January 10, 2014....03:30 PM
Judge: Daniel L Steckel

THE DEFENDANT SHALL BE **PERSONALLY PRESENT** AT BOTH THE PRE-TRIAL CONFERENCE AND / OR THE JURY TRIAL. FAILURE TO APPEAR AT EITHER THE PRE-TRIAL CONFERENCE OR THE JURY TRIAL WILL RESULT IN A **BENCH WARRANT** FOR THE DEFENDANT'S **ARREST**.

I HEREBY CERTIFY that the foregoing is a true and correct copy of this Notice of Hearing entered by the court and on file in this office. I further certify that copies of this notice were served as follows:

Defendant: Mailed _____ Hand Delivered X Signature _____
Clerk SA Date 11/12/13 Phone () _____

Jacob D Deaton
950 W. Bannock, Ste. 1161
Boise ID 83702

Private Counsel: Mailed _____ Hand Delivered X Signature _____
Clerk SA Date 11/12/13 Phone () _____

Prosecutor: Interdepartmental Mail X ☒ Ada ☐ Boise ☐ Eagle ☐ G.C. ☐ Meridian
Clerk S.H. Date 11/10

Public Defender: Interdepartmental Mail _____
Clerk _____ Date _____

Other: _____

Mailed _____ Hand Delivered _____ Signature _____
Clerk _____ Date _____ Phone () _____

Dated: 11/12/2013

CHRISTOPHER D. RICH
Clerk of the Court

By: Stephanie Hardy
Deputy Clerk

Cite Pay Website: <https://www.citepayusa.com/payments> Supreme Court Repository: <https://www.idcourts.us>

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NO. _____
A.M. _____ FILED P.M. *MM*

NOV 15 2013

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Sarah Q. Simmons
Deputy Prosecuting Attorney
Magistrate Division, 200 W. Front St. Rm. 3191
Boise, ID 83702 Telephone: 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff,)
vs.)
)
DANIEL JAMES CHERNOBIEFF,)
)
Defendant.)
_____)

Case No. CR-MD-2013-0011740 ¹³²⁷¹
**STATE'S OBJECTION
TO DEFENDANT'S
MOTION TO SUPPRESS**

The Ada County Prosecuting Attorney, through Sarah Q. Simmons, Deputy Prosecuting Attorney for Ada County, State of Idaho, hereby objects to the Defendant's Motion to Suppress and requests that this Court enter an order denying Defendant's Motion.

FACTS AND PROCEDURAL BACKGROUND

On September 11, 2013 at approximately 11:11 p.m., Trooper Ben Comorosky stopped a 1993 green Chevrolet C15 for failing to stop at a stop sign at Gem Street and Meridian Road. Trooper Comorosky made contact with the driver and he identified him as Daniel J. Chernobieff, the defendant in this case, with his Hawaii driver's license. Trooper Comorosky observed the

fr

defendant place two breath mints in his mouth and noted that the defendant had difficulty retrieving his documents because his fingers were fumbling so much. At 11:22 p.m. Trooper Matthew Sly responded to assist at the scene.

When Trooper Sly approached the vehicle, he observed the strong smell of alcohol coming from inside, as well as the defendant's glassy and bloodshot eyes. Trooper Sly asked the defendant to step out of his vehicle. The defendant responded with slow, slurred speech and asked why he needed to exit his vehicle. Trooper Sly stated that based on the strong smell of alcohol he needed to make sure the defendant was safe to drive. The defendant again asked "why?" Trooper Sly repeated himself, again asking the defendant to exit his vehicle. The defendant complied and did exit.

Once out of the vehicle, the defendant continued to be uncooperative. He refused to participate in the standardized field sobriety tests. Trooper Sly began by asking the defendant where he was coming from, a question he had to ask twice. The defendant never answered, but instead inquired, "can I answer you when you accuse me of anything, or?" As he spoke Trooper Sly could smell the odor of alcohol on the defendant's breath. The defendant became agitated saying, "you know what I don't believe you, honestly I think a, I don't have anything to say to you actually." Trooper Sly asked the defendant to clarify what he meant. In response the defendant repeated, "I don't have anything to say to you." Trooper Sly asked the defendant if he was refusing to participate in the standardized field sobriety tests, again stating that he could smell alcohol on the defendant's breath. The defendant responded, "I am saying to you sir, I don't think you are giving me an appropriate...." The defendant then stopped speaking, pausing

for several seconds, then continuing, "You are not giving me an opportunity to explain myself." Trooper Sly observed that the defendant seemed to be having a difficult time formulating what he was trying to say. Nonetheless, Trooper Sly gave the defendant the opportunity to explain himself, asking him to start from the beginning. The defendant said, "I do not think I am going to answer any of your questions, that's it." Trooper Sly again asked the defendant if he was refusing to perform the field sobriety tests. The defendant paused and said, "I don't think you are looking out for my best interest," and after a pause, "I don't think it is in my best interest to answer any of your questions." Trooper Sly asked the defendant if he had anything else to say, to which the defendant replied "no."

Trooper Sly arrested the defendant for driving under the influence of alcohol and/or drugs. The Trooper handcuffed him, searched him for weapons, and placed him in the rear seat of his patrol vehicle. The defendant listened to the ALS Advisory during the fifteen minute waiting period. After the waiting period was complete, the defendant refused to submit to a breath test, indicating to Trooper Sly that he refused because he did not trust the Trooper. Trooper Sly asked the defendant if he would allow Sargent John Burke, who had arrived on scene to assist at 11:29 p.m., to give the breath test. The defendant again stated that he did not trust Trooper Sly and that he also did not trust Sargent Burke.

After the defendant's refusals of the breath test, Trooper Sly called the on-call prosecutor for Ada County, Scott Bandy, to inform Bandy of the incident. Trooper Sly then transported the defendant to the Ada County Jail in his patrol vehicle. Trooper Sly made another call to request a phlebotomist be dispatched to the Ada County Jail. Upon arrival at the jail, Trooper Sly again

called Prosecutor Bandy. Prosecutor Bandy informed Trooper Sly that he had attempted to call the on-call Ada County Judge to obtain a telephonic warrant that would authorize a blood draw from the defendant. However, Prosecutor Bandy explained that he was unable to reach the judge and Prosecutor Bandy authorized the blood draw due to exigent circumstances.

A phlebotomist arrived at the Ada County Jail and performed a blood draw on the defendant. The blood samples were sent to the Idaho State Police Forensics lab for processing. The test results indicated that the defendant had a blood alcohol content of .226.

The defendant is charged with driving under the influence of alcohol, excessive alcohol concentration, under Idaho Code §18-8004. At the time of the October 23, 2013 pre-trial conference, the blood test results were not yet back. The results of the defendant's blood draw were subsequently received and disclosed, and on October 31, 2013, the defendant filed a motion to suppress those results. The State objects to the defendant's motion.

LEGAL STANDARD

Drawing blood from a driver who is accused of driving under the influence is a seizure. It is well settled that to seize a sample of an individual's blood, the State must either have a warrant or the facts surrounding the blood draw must fall within an exception to the warrant requirement.

Searches and seizures conducted without a warrant are presumptively unreasonable. *Schmerber [v. California]*, 384 U.S. [757] at 770, 86 S.Ct. [1826] at 1835 [(1966)]; *State v. Curtis*, 106 Idaho 483, 488, 680 P.2d 1383, 1388 (Ct. App. 1984). To overcome the presumption, the state bears the burden of establishing two prerequisites. First, the state must prove that a warrantless search fell within a well-recognized exception to the warrant requirement. *State v. Diaz*, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007). Second, the state must show that

even if the search is permissible under an exception to the warrant requirement, it must still be reasonable in light of all of the other surrounding circumstances. *Id.*

State v. DeWitt, 145 Idaho 709, 711-12, 184 P.3d 215, 217-18 (Ct. App. 2008).

There are a number of exceptions to the warrant requirement. These exceptions include valid consent (*Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, (1973); *State v. Whiteley*, 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct. App. 1993); *State v. Rusho*, 110 Idaho 556, 558, 716 P.2d 1328, 1330, (Ct. App. 1986), *State v. Nickerson*, 132 Idaho 406, 410, 973 P.2d 758, 762 (Ct. App. 1999)), and exigent circumstances (*State v. Robinson*, 144 Idaho 496, 499, 163 P.3d 1208, 1211 (Ct. App. 2007)).

Each of these exceptions applies to the blood draw at issue here.

CONSENT

Consent is a well-recognized exception to the warrant requirement. *State v. Wheeler*, 149 Idaho 364, 370, 233 P.3d 1286, 1292 (Ct. App. 2010) citing *Diaz*, 144 Idaho at 303, 160 P.3d at 742. In Idaho, by driving on the public roadways, drivers demonstrate that they have consented to evidentiary testing pursuant to Idaho Code §18-8002.

By terms of this statute, anyone who accepts the privilege of operating a motor vehicle upon Idaho's highways has thereby consented in advance to submit to a BAC test. *McNeely v. State*, 119 Idaho 182, 187, 804 P.2d 911, 916 (Ct. App. 1990). By implying consent, the statute removes the right of a driver to refuse an evidentiary test. *Goerig v. State*, 121 Idaho 26, 29, 822 P.2d 545, 548 (Ct. App. 1992). Hence, although an individual has the physical ability to prevent a test, there is no legal right to withdraw the statutorily implied consent. [*State v. Woolery*, 116 Idaho [368] at 372, 775 P.2d [1210] at 1214; *State v. Burris*, 125 Idaho 289, 291, 869 P.2d 1384, 1386 (Ct. App. 1994).

State v. Nickerson, 132 Idaho 406, 410, 973 P.2d 758, 762 (Ct. App. 1999).

In *Diaz*, The Idaho Supreme Court found that the blood draw at issue in the case “fell within a well-recognized exception to the warrant requirement,” because Diaz had given his implied consent to the testing. 144 Idaho at 303, 160 P.3d at 742 (2007). The Court also performed the second step in the analysis by reviewing whether the search was “reasonable” in light of the circumstances. The Court examined whether the blood draw was done in a medically acceptable manner. The Court discussed the administration of the test at a hospital by a qualified hospital technician, among other facts, and concluded that under the totality of the circumstances, the test was reasonable. *Id*; see also *State v. Worthington*, 138 Idaho 470, 65 P.3d 211 (Ct. App. 2002). In the case at bar, the defendant’s blood was drawn by a trained phlebotomist in a medically acceptable manner. In fact, the manner by which the blood draw was performed is not contested by the defendant here.

The Idaho Court of Appeals in *State v. Wheeler* found, that:

Consent is a well-recognized exception to the warrant requirement. *Diaz*, 144 Idaho at 303, 160 P.3d at 742. “Any person who drives or is in actual physical control of a motor vehicle” in Idaho consents to be tested for alcohol at the request of a peace officer with reasonable grounds to believe the person drove under the influence. I.C. § 18–8002(1); *Diaz*, 144 Idaho at 302, 160 P.3d at 741. In *Diaz*, the Court found that the defendant gave his consent to a blood draw by driving in Idaho, despite his repeated protests. *Id.* at 302–03, 160 P.3d at 741–42. In view of the Supreme Court’s decision in *Diaz*, we conclude that a protest to a blood draw does not invalidate consent created by a person’s actions and statute.

State v. Wheeler, 149 Idaho 364, 370, 233 P.3d 1286, 1292 (Ct. App. 2010). Thus protests to the evidentiary test in the current case do not invalidate the consent. Such an analysis contemplates that the driver had already taken advantage of the privilege of driving on the public roadways

prior to being stopped. Having enjoyed the benefit of the bargain of implied consent, the driver may not void the consent already given.

In *Missouri v. McNeely*, the Supreme Court identified the sole issue examined as “whether the natural metabolization of alcohol in the bloodstream presents a *per se* exigency that justifies an exception the Fourth Amendment’s warrant requirement for nonconsensual blood testing in all drunk-driving cases.” 569 U.S. ___, ___, 133 S.Ct. 1552, 1556 (2013). Neither the statement of the issue under analysis nor the Court’s holding implicate the consent exception to the warrant requirement.

In *McNeely*, the United States Supreme Court did not rule on the validity of any implied consent laws. See 596 U.S. at ___, 133 S.Ct.at 1552 (2013). *McNeely* merely mentioned in dicta that implied consent laws are widespread and a tool that may be used to keep roads safe. *Id.* at ___, 1556-67. Thus, the dicta in *McNeely* does not change the status of the implied consent law in Idaho.

The blood draw in the instant case is admissible under this analysis. It was taken from, the defendant, a licensed driver who drove on Idaho public roadways and who therefore gave consent. The blood draw was taken in a medically acceptable manner and was reasonable under the totality of the circumstances.

EXIGENT CRICUMSTANCES

Another well-established exception to the warrant requirement is the presence of exigent circumstances.

“[W]arrants are generally required to search a person's home or his person unless ‘the exigencies of the situation’ make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth

Amendment.” *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403, 126 S.Ct.1943, 1947 (2006) (quoting *Mincey v. Arizona*, 437 U.S. 385, 393–94, 98 S.Ct. 2408, 2414 (1978)). A warrantless search under this exception must be strictly circumscribed by the nature of the exigency that justifies the intrusion. *State v. Buterbaugh*, 138 Idaho 96, 99, 57 P.3d 807, 810 (Ct. App. 2002).

State v. Robinson, 144 Idaho 496, 499, 163 P.3d 1208, 1211 (Ct. App. 2007). Exigent circumstances may justify a warrantless search of the body through a blood draw. *See Schmerber v. California*, 384 U.S. 757, 770, 86 S.Ct.1826, 1835-36 (1966).

The United States Supreme Court concluded that the elimination of alcohol does not alone create a *per se* rule of exigency in driving under the influence cases. *McNeely*, 569 U.S. at ____, 133 S.Ct.at 1563. The Court ruled that there must be a totality of the circumstances analysis in each case. *Id.*

The U.S. Supreme Court opinion in *McNeely* is premised on the idea that blood alcohol is not a “now or never” proposition, because the rate of alcohol elimination can be determined within a reasonable range based on retrograde extrapolation.¹ 569 U.S. at ____, 133 S.Ct.at 1561. The majority opinion presumes that so long as some alcohol is in the defendant’s system when the test is administered, there is a formulaic method through which the actual blood alcohol concentration at the time the defendant was driving can be determined. It is largely based on this premise that the Supreme Court concludes that “special facts” in addition to inevitable elimination of alcohol must be necessary to create an exigency. *See McNeely*, 569 U.S. at ____, 133 S.Ct.at 1557.

¹ This ignores the fact that intoxicants other than alcohol may be at issue as well.

In the State of Idaho the law does not permit retrograde extrapolation. Rather, in the event that an evidentiary test for blood alcohol reveals a result that is under 0.08 - even if it is substantially after the defendant last drove - that person cannot generally be prosecuted.² Idaho Code §18-8004(2) provides that, “[a]ny person having an alcohol concentration of less than 0.08, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, by a test requested by a police officer shall not be prosecuted for driving under the influence of alcohol except as provided in subsection (3) [drug DUI], subsection (1)(b) [commercial vehicle DUI] or subsection (1)(d) [underage DUI] of this section.” Thus the laws of the State of Idaho require a quick process not contemplated by the U.S. Supreme Court, as the State’s evidence can be lost in short order. *See McNeely*, 569 U.S. at ____, 133 S.Ct.at 1575. Thus, the legal environment in Idaho should be seen as one of the “special facts” that supports a finding of exigency.

There were certain circumstances unique to this stop that also contribute to the totality of the circumstances analysis. The defendant was uncooperative and difficult to interact with during the traffic stop. He had difficulty communicating, continually questioned the officer, and refused to contribute in any way to the investigation. As Trooper Sly requested that the defendant participate in the standardized field sobriety tests, the defendant appeared to be “having a hard time formulating what he was trying to say,” but ultimately stated that he was not being given an

² There is an exception for cases where the defendant fails to provide a valid sample on a breath test. “A shallow breath sample testing at below .08 does not inherently show that the individual’s true breath alcohol concentration is less than .08. Consequently, it does not *ipso facto* bar prosecution by the terms of Section 18–8004(2).” *State v. Turbyfill*, 154 Idaho 641, 301 P.3d 647 (Ct. App. 2012), review denied (Nov. 29, 2012).

opportunity to explain himself. In reply, Trooper Sly asked the defendant to "start from the beginning." The defendant responded by saying "I do not think I am going to answer any of your questions. That's it." Trooper Sly inquired as to if the defendant was refusing to participate in the field sobriety tests. The defendant did not answer the question and indicated that he had nothing else to say.

The defendant was arrested for driving under the influence of alcohol and/or drugs. He subsequently refused to submit to a breath test because, as he indicated, he did not trust Trooper Sly or Sargent Burke. Based on the defendant's refusal, Trooper Sly called the on-call prosecutor for Ada County to inform him of the information pertaining to the arrest. The on-call prosecutor then attempted to call the on-call Ada County Judge to obtain a telephonic warrant for a blood sample from the defendant. Unfortunately, the on-call Judge could not be reached. The prosecutor authorized the blood draw based on the exigent circumstances that Idaho does not permit retrograde extrapolation and the judge was not available. The results of that blood test revealed that the defendant's blood alcohol level was a .226 at the time of the draw.

The level of alcohol in the defendant's blood was inevitably going down. Law enforcement tried to get a warrant, however one could not be obtained because the judge could not be reached by telephone. Due to the nature of the law in Idaho, if law enforcement had waited longer to perform a blood draw and the test resulted in a blood alcohol concentration of less than 0.200. The defendant could not be prosecuted for driving under the influence, excessive, regardless of what his blood alcohol levels were at the time he was actually driving. If no warrant could have been obtained until the next morning, his blood alcohol concentration

would have dropped below 0.08 and no DUI charges would be permitted. In light of these circumstances, Prosecutor Bandy perceived that the circumstances were exigent. Despite the difficulty in obtaining a warrant, a blood draw needed to be done.

In addition to the inevitable diminution of the alcohol in the defendant's blood, the law in Idaho and the circumstances of this case, where law enforcement attempted to obtain a warrant but was unable to do so because the judge could not be reached, constitute exigent circumstances that satisfy the exception to the warrant requirement. Taking the totality of the circumstances into consideration, the needs of law enforcement were sufficiently compelling and the "exigencies of the situation" great enough that the warrantless search was reasonable under the Fourth Amendment.

Additionally, the defendant had a 0.226 blood alcohol content at the time his blood was drawn. By driving with such a significant blood alcohol level the defendant placed the general public at significant risk. The prosecutor and trooper acted in good faith and in reliance on Idaho Code §18-8002, *Diaz* and *Wheeler*, as well as the exception based on exigent circumstances, when they made the decision to have the defendant's blood drawn. The public interest supports admission of the results.

REMEDY

The State submits that the exclusionary rule is not the proper remedy.

The exclusionary rule is instead a judicially created means of deterring illegal searches and seizures. *United States v. Calandra*, 414 U.S. 338, 348, 94 S.Ct. 613, 620, 38 L.Ed.2d 561 (1974). As such, the rule does not "proscribe the introduction of illegally seized evidence in all proceedings or against all persons," *Stone v. Powell, supra*, [428 U.S. 465] at 486, 96 S.Ct. [3037], at 3049 [(1976)], but applies only in contexts "where its remedial objectives are thought most

efficaciously served.” *United States v. Calandra*, *supra*, [414 U.S. 338] at 348, 94 S.Ct., [613] at 620; see also *United States v. Janis*, 428 U.S. 433, 454, 96 S.Ct. 3021, 3032, 49 L.Ed.2d 1046 (1976) (“If ... the exclusionary rule does not result in appreciable deterrence, then, clearly, its use in the instant situation is unwarranted”). Moreover, because the rule is prudential rather than constitutionally mandated, we have held it to be applicable only where its deterrence benefits outweigh its “substantial social costs.” *United States v. Leon*, 468 U.S. [897], at 907, 104 S.Ct.[3405], at 3412 [(1984)].

Pa. Bd. Prob. & Parole v. Scott, 524 U.S. 357, 363, 118 S.Ct. 2014, 2019 (1998).

The exclusionary rule's sole purpose is to deter future Fourth Amendment violations, *e.g.*, *Herring v. United States*, 555 U.S. 135, 141, 129 S.Ct. 695, 172 L.Ed.2d 496, and its operation is limited to situations in which this purpose is “thought most efficaciously served,” *United States v. Calandra*, 414 U.S. 338, 348, 94 S.Ct. 613, 38 L.Ed.2d 561. For exclusion to be appropriate, the deterrence benefits of suppression must outweigh the rule's heavy costs. Under a line of cases beginning with *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677, the result of this cost-benefit analysis turns on the “flagrancy of the police misconduct” at issue. *Id.*, at 909, 911, 104 S.Ct. 3405. When the police exhibit “deliberate,” “reckless,” or “grossly negligent” disregard for Fourth Amendment rights, the benefits of exclusion tend to outweigh the costs. *Herring*, *supra*, at 144, 129 S.Ct. 695. But when the police act with an objectively reasonable good-faith belief that their conduct is lawful, or when their conduct involves only simple, isolated negligence, the deterrent value of suppression is diminished, and exclusion cannot “pay its way.” See *Leon*, *supra*, at 909, 919, 908, n. 6, 104 S.Ct. 3405; *Herring*, *supra*, at 137, 129 S.Ct. 695. Pp. 2426 – 2428.

Davis v. United States, 131 S.Ct. 2419, 2422 (2011). The State recognizes that the Idaho Supreme Court has declined to apply the *Leon* good faith exception in Idaho. *State v. Koivu*, 152 Idaho 511, 272 P.3d 483 (2012). However, law enforcement acted within the well authorized and common practices of Idaho law that has been explicitly authorized by the Idaho Supreme Court, Idaho Court of Appeals, and the Idaho State Legislature. To now punish the officer and the public by suppressing the evidence simply because a judge could not be contacted is not a proper application of the exclusionary rule.

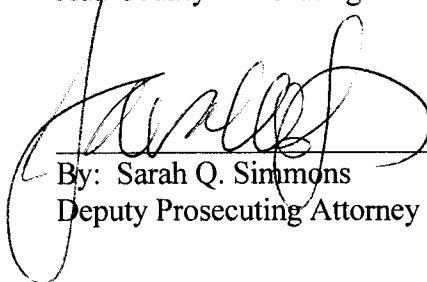
CONCLUSION

The defendant implicitly consented to the blood draw, exigent circumstances required the blood draw to be warrantless, and the blood draw was reasonable. The Court should deny the defendant's motion to suppress.

DATED THIS 15 day of November 2013.

GREG H. BOWER

Ada County Prosecuting Attorney



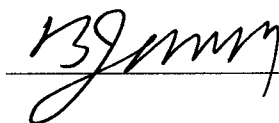
By: Sarah Q. Simmons

Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of November 2013, I caused to be served a true and correct copy of the foregoing document to: **JACOB D. DEATON, LAW OFFICE OF JACOB D. DEATON, 6126 W. State Street, Boise, Idaho 83703** by the method indicated below:

☐ INTERDEPARTMENTAL MAIL
☒ U.S. MAIL (Postage Prepaid)
☐ FAX TRANSMISSION
☐ HAND DELIVERY



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

NO.

FILED
P.M.

8:42

JAN 10 2014

STATE OF IDAHO,

Plaintiff,

vs.

CHERNOBIEFF, DANIEL

Defendant.

MAGISTRATE MINUTES / NOTICE OF HEARING

☒ **PRE-TRIAL MEMORANDUM**

CHRISTOPHER D. RICH, Clerk
By CASSANDRA JOHNSTON
DEPUTY

Case Number: CR-MJ-2013-13271

Event Date: _____

Judge: Simmons for SPECK Clerk: CJ

Case Called: _____ ☒ In Chambers

☐ Interpreter: _____

☒ AC ☐ BC ☐ EA ☐ GC ☐ MC SIMMONS PD (Private) DEATON

Defendant: ☐ Present ☐ Not Present ☐ In Custody ☐ PD Appointed ☐ PD Denied ☐ Waived Attorney

☐ Defendant failed to appear. Bond forfeited/ROR revoked. Bench Warrant issued. Bond \$ _____

☐ Advised Rights ☐ Not Guilty ☐ Guilty / Admit ☐ Written Guilty Plea ☐ No Contact ☐ Pre-Trial Release Order

PARTIES STP TO CONTINUE TO ANOTHER DATE BEFORE

JUDGE SPECKEL.

☐ Release Defendant, This Case Only

NOTICE OF HEARING

☐ Sentencing on _____ at _____ am/pm w/ Judge _____

☐ Court Trial Conference on _____ at _____ am/pm w/ Judge _____

☐ Court Trial on _____ at _____ am/pm w/ Judge _____

☐ Pre-Trial Conference on _____ at _____ am/pm w/ Judge _____

☐ Jury Trial on _____ at _____ am/pm w/ Judge _____

☒ Motion to Suppress on 2/4/14 at 3:30 am/pm w/ Judge Speckel

☐ Contact the Ada County Public Defender, 200 W. Front St., Rm. 1107, Boise, ID 83702, telephone (208) 287-7400.

You must appear as scheduled above. Failure to do so will result in a warrant being issued for your arrest, or default judgment may be entered if you are charged with an infraction.

ADA COUNTY COURTHOUSE, 200 W. FRONT STREET, BOISE, ID 83702

I hereby certify that copies of this notice were served as follows:

Defendant: Hand Delivered ☒ Via Counsel ☐

Defense Atty: Hand Delivered ☒ Intdept Mail ☐

Prosecutor: Hand Delivered ☒ Intdept Mail ☐

CHRISTOPHER D. RICH, Clerk of the District Court

By: [Signature]
Deputy Clerk

Signature _____

[Signature]
Magistrate Judge (for Pre-Trial Memorandum)

DATED Jan. 10, 2014

000047

Time	Speaker	Note
<u>4:06:02 PM</u>		MD2013-13271 Chernobieff, Daniel--Motion to Suppress
<u>4:06:47 PM</u>	State	Calls SW #1
<u>4:07:54 PM</u>		SW #1 Matthew Sly
<u>4:08:02 PM</u>	Simmons	
<u>4:08:10 PM</u>	Simmons	Training Experience
<u>4:08:29 PM</u>	Simmons	Direct Examination
<u>4:08:44 PM</u>	Objection	Deaton
<u>4:08:52 PM</u>	Judge	Overruled
<u>4:09:07 PM</u>	Simmons	Continues
<u>4:09:11 PM</u>	Objection	Deaton Speculation
<u>4:09:18 PM</u>	Simmons	Continues direct examination
<u>4:09:31 PM</u>	Objection	Deaton---Hear Say
<u>4:09:35 PM</u>	Simmons	Re States Question
<u>4:10:40 PM</u>	Objection	Hear Say--Deaton
<u>4:10:51 PM</u>	Simmons	Continues Questioning SW #1
<u>4:11:53 PM</u>	Objection	Deaton---Hear Say
<u>4:11:56 PM</u>	Judge	Overruled
<u>4:12:03 PM</u>	Objection	Hear Say---Deaton
<u>4:12:15 PM</u>	Simmons	Explaining that he cant testify comments made by his co-worker
<u>4:12:32 PM</u>	Simmons	Continues questioning SW #1
<u>4:14:11 PM</u>	Deaton	Objection--Deaton
<u>4:14:16 PM</u>	Judge	Response?
<u>4:14:23 PM</u>	Simmons	I can ask the Corpal to explain his DUI experience
<u>4:14:30 PM</u>	Judge	Overruled
<u>4:17:12 PM</u>	Simmons	Continues Direct examination
<u>4:19:32 PM</u>	SW#1	Explaining that he needed to obtain a search warrant for a blood sample
<u>4:19:46 PM</u>	Simmons	When did you make this phone call?
<u>4:19:52 PM</u>	SW#1	I was at the scene before I went down to the Ada County Jail
<u>4:20:23 PM</u>	Simmons	You made the phone call?
<u>4:20:29 PM</u>	SW #1	I made the call and talked to the Pros. and he would make a call to the on call Judge
<u>4:20:51 PM</u>	Simmons	Continues Direct examination
<u>4:21:26 PM</u>		No warrant auth
<u>4:21:33 PM</u>	Deaton	Objection
<u>4:21:41 PM</u>	Judge	You are free to respond to his objection
<u>4:22:00 PM</u>	Simmons	Did you obtain a warrant?
<u>4:22:11 PM</u>	SW #1	No warrant
<u>4:22:15 PM</u>	SW #1	After talking to the Pros. He told me to take blood.

<u>4:23:01 PM</u>	Simmons	Anthing unusual about the blood draw?
<u>4:23:18 PM</u>	SW#1	
<u>4:23:29 PM</u>	Simmons	Did you watch any videos in preparation for your testimony today?
<u>4:23:45 PM</u>	SW #1	Yes, I watched my video from my traffic stop
<u>4:23:53 PM</u>		No Further Questions
<u>4:23:58 PM</u>	Deaton	Cross Examination of SW#1--Trooper Sly
<u>4:25:26 PM</u>	Deaton	No Further Questions
<u>4:25:32 PM</u>	Judge	Questioning citation that was issued
<u>4:25:58 PM</u>	SW #1	Steps down
<u>4:26:17 PM</u>	Simmons	Calls SW #2--Sworn
<u>4:26:39 PM</u>	Simmons	Bandy, Scott
<u>4:27:01 PM</u>	SW#2	Employment History
<u>4:27:32 PM</u>	Simmons	Direct Examination
<u>4:27:45 PM</u>	SW#2	Received a phone call from Trooper Sly. Performing a DUI
<u>4:28:01 PM</u>	SW#2	I had Trooper Sly give me a run through for the stop and the PC for the investigation. We should seek the approval of the on call magistrate
<u>4:28:42 PM</u>	Simmons	Continues Direct
<u>4:28:48 PM</u>		I instructed the Corpal that I would make contact with the on call magistrate
<u>4:29:09 PM</u>	Simmons	Did he return your call?
<u>4:29:16 PM</u>	SW #2	
<u>4:29:42 PM</u>	Simmons	How many times did you call that number?
<u>4:29:57 PM</u>	SW#2	At least 3 times.
<u>4:30:31 PM</u>	Objection	Objection...Hear Say--Speculation
<u>4:30:35 PM</u>	Judge	Sustained
<u>4:30:49 PM</u>	Simmons	Continues Direct examination
<u>4:31:29 PM</u>	Simmons	No Further Questions SW#2 Steps down
<u>4:31:35 PM</u>	Deaton	No Further Questions
<u>4:31:47 PM</u>	Simmons	Argument
<u>4:39:40 PM</u>	Deaton	Argument
<u>4:46:45 PM</u>	Judge	
<u>4:46:48 PM</u>	Simmons	Rebuttal
<u>4:51:31 PM</u>	Judge	Denied Motion to Suppress. Defendant did delay the process. Mr. Bandy did follow procedure set in Ada County to get a Search Warrant
<u>4:55:08 PM</u>	Deaton	I just want to be clear...You are taking into account how the process is available.
<u>4:55:28 PM</u>	Judge	I am not sure that I am understanding your questions. I think that if Mr. Bandy did not make a good faith effort to reach a Judge...

<u>4:55:59 PM</u>	Deaton	The Ruling is...A warrant is not required...because the State made a good faith effort. The court is finding that there is a delay in the process.
<u>4:56:50 PM</u>	Judge	Explains Further
<u>4:56:58 PM</u>	Deaton	Didn't my client speed up the process?
<u>4:57:20 PM</u>	Judge	He forced Corpral Sly to get the warrant
<u>4:58:00 PM</u>	Deaton	Motion to reconsider?

FILED 2/4/14 AT 8:07 .M.
 CHRISTOPHER D. RICH,
 CLERK OF THE DISTRICT COURT
 BY [Signature]
 Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO)

Plaintiff,)

vs.)

CHERNODIETZ, DANIEL)

Defendant.)

Case No. CR-MD-2013-13271

TRIAL STATUS MEMORANDUM

4/15/14 @ 8:15
W/Steuer

Appearances: Prosecutor SIMMONS

Defense Counsel DEAN

- ☒ This case is ready for trial.
- ☐ Discovery has been completed.
- ☒ Cut off date for discovery is 7 DAYS prior.
- ☒ State is to prepare a formal complaint for trial. (by DATE 7 days prior)
- ☐ Parties are to prepare proposed jury instruction on the elements of count(s) _____.
- ☐ The State does not intend to amend the charge.
- ☐ The State may amend the charge to _____.
- ☒ The parties anticipate the case can be tried in one day.
- ☒ Courtroom media equipment will be needed. (The attorneys are responsible for the presentation of evidence.)
- ☒ Motions subject to Idaho Criminal Rule 12(b) have been heard.
- ☐ Other _____

[Signature]
 Prosecuting Attorney

2/5/14
 Date

[Signature]
 Defense Counsel

[Signature]
 Magistrate

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
MAGISTRATE DIVISION

200 W. Front Street, Boise Idaho 83702

STATE OF IDAHO,
Plaintiff.

vs.

Daniel J Chernobieff
1411 E Symphony Ct
Boise, ID 83706
Defendant.

Case No: CR-MD-2013-0013271

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Jury Trial.... Tuesday, April 15, 2014.... 08:15 AM
Judge: Daniel L Steckel

THE DEFENDANT SHALL BE **PERSONALLY PRESENT** AT BOTH THE PRE-TRIAL CONFERENCE AND / OR THE JURY TRIAL. FAILURE TO APPEAR AT EITHER THE PRE-TRIAL CONFERENCE OR THE JURY TRIAL WILL RESULT IN A **BENCH WARRANT** FOR THE DEFENDANT'S ARREST.

I HEREBY CERTIFY that the foregoing is a true and correct copy of this Notice of Hearing entered by the court and on file in this office. I further certify that copies of this notice were served as follows:

Defendant: Mailed Clerk 2/4/14 Hand Delivered Date 2/4/14 Signature _____ Phone () _____

Jacob D Deaton
950 W. Bannock, Ste. 1161
Boise ID 83702

Private Counsel: Mailed Clerk 2/4/14 Hand Delivered Date 2/4/14 Signature _____ Phone () _____

Prosecutor: Interdepartmental Mail Clerk 2/4/14 Date 2/4/14 ☒ Ada ☐ Boise ☐ Eagle ☐ G.C. ☐ Meridian

Public Defender: Interdepartmental Mail Clerk _____ Date _____

Other: _____

Mailed Clerk _____ Hand Delivered Date _____ Signature _____ Phone () _____

Dated: 2/4/2014

CHRISTOPHER D. RICH
Clerk of the Court

By: Cassandra Johnston
Deputy Clerk

Cite Pay Website: <https://www.citepayusa.com/payments> Supreme Court Repository: <https://www.idcourts.us>

NO.

A.M.

FILED

P.M.

FEB 19 2014

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney

Sarah Q. Simmons

Deputy Prosecuting Attorney

Magistrate Division, 200 W. Front Street, Room 3191

Boise, Idaho 83702

Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

DANIEL J. CHERNOBIEFF,

Defendant.

Case No. CR-MD-2013-0013271

**STIPULATION
TO CONTINUE
JURY TRIAL**

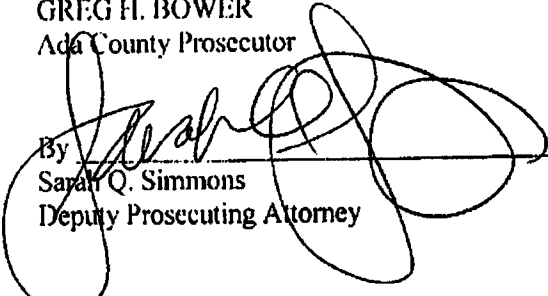
COMES NOW, Sarah Q. Simmons, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and Jacob Deaton, attorney for defendant, and stipulate to continue the jury trial, currently set in this matter for April 15, 2014 at 8:15 a.m., to a suitable time for Court and Counsel. Trooper Benjamin Comorosky, a key witness for the State, is unavailable to testify on the currently scheduled date.

Attached to this stipulation are the dates that witnesses for both the State and the defense are unavailable. Defendant waives speedy trial.

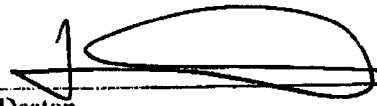
CASE # CRMD20130013271 DANIEL J. CHERNOBIEFF
STIPULATION/ORDER TO CONTINUE, Page 1

DATED this 11 day of February 2014.

GREG H. BOWER
Ada County Prosecutor

By 
Sarah Q. Simmons
Deputy Prosecuting Attorney

DATED this 19 day of February 2014.

By 
Jacob Deaton
Attorney for Daniel J. Chernobieff, Defendant

CASE # CRMD20130013271 DANIEL J. CHERNOBIEFF
STIPULATION/ORDER TO CONTINUE, Page 2

NO.

FILED

A.M.

P.M.

FEB 27 2014

CHRISTOPHER D. RICH, Clerk
By CASSANDRA JOHNSTON
DEPUTY

RECEIVED

FEB 19 2014

Ada County Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO. IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO.)

Plaintiff.)

vs.)

DANIEL J. CHERNOBIEFF.)

Defendant.)

Case No. CR-MD-2013-0013271

ORDER TO CONTINUE

The above entitled matter having come before this Court and Good Cause appearing,
and the parties having stipulated thereto;THEREFORE, IT IS HEREBY ORDERED that the Jury Trial be continued to the
day of May 2014, at 8:15 o'clock.DATED this 25th day of February 2014.

Judge

CASE # CRMD20130013271 DANIEL J. CHERNOBIEFF
STIPULATION/ORDER TO CONTINUE, Page 3

CC: D, AC 2/27/14

The State is unavailable for trial on the following dates:

March 17-29

April 3-11

April 13-27

CASE # CRMD20130013271 DANIEL J. CHERNOBIEFF
STIPULATION/ORDER TO CONTINUE, Page 4

TIME RECEIVED
May 7, 2014 11:21:29 AM MDT

REMOTE CSID
6506556633

DICTION
133

PAGES
5

STATUS
Received

From: Jake Deaton

Fax: (208) 685-2351

To: Ada County Court

Fax: +1 (208) 287-6919

Page 1 of 5 05/07/2014 11:19

NO. _____ FILED _____
A.M. _____ P.M. _____

MAY 07 2014

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

JACOB D. DEATON, ISB #7470
LAW OFFICE OF JACOB D. DEATON, PLLC
PO Box 191010
Boise, Idaho 83719
Tel: (208) 685-2350
Fax: (208) 685-2351

Attorney for Defendant Chernobieff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	Case No. CR-MD-2013-0013271
)	
v.	)	MOTION TO STAY
)	
DANIEL CHERNOBIEFF,)	
)	
Defendant/Appellant.)	
_____)	

COMES NOW, the above-named Petitioner, Daniel Chernobieff, by and through his attorney of record, Jacob Deaton of the Law Office of Jacob D. Deaton and moves this Court to stay the imposition of his sentence until such time as the appeal filed by the Defendant has been heard.

Idaho Criminal Rule 38 grants this Court the power to stay both a judgment of imprisonment as well a judgment to pay fines and costs under such terms as the court deems proper.

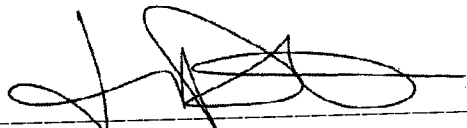
Pursuant to the authority granted by I.C.R. Rule 38, the Defendant respectfully asks this Court to stay the execution of the both the judgment of imprisonment and judgment to pay fines and costs in this case. The Defendant has filed a notice of appeal

MOTION TO STAY- 1

000057

regarding this Court's decisions regarding numerous issues related to expert witnesses in this case. It would be unjust to permit the Court's sentence to be imposed in this case because the Defendant's appeal is meritorious and has, in Defendant's view, some likelihood of being successful. Imposition of the Court's sentence, including a minimum of 30 days of jail and a significant fine and at least 1 year driver's license would result in a significant punishment to the Defendant, which could not be remedied should the Defendant's appeal result in a new trial or further proceedings.

Dated 7th day of May, 2014.



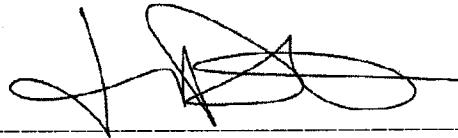
Jacob D. Deaton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of May, 2014, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Ada County Prosecuting Attorney
200 W. Front Street
Boise, Idaho 83617
Fax: (208) 287-7719

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile



JACOB D. DEATON

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

MAY 08 2014

CHRISTOPHER D. RICH, Clerk
DEPUTY

STATE OF IDAHO,

Plaintiff,

vs.

CHEMNODIEFF, DANIEL

Defendant.

MAGISTRATE MINUTES / NOTICE OF HEARING
☐ **PRE-TRIAL MEMORANDUM**

Case Number: CR-19-2013-17272

Event Date: _____

Judge: STECKEL Clerk: CASSANDRA

Case Called: _____ ☒ In Chambers

☐ Interpreter: _____

☒ AC ☐ BC ☐ EA ☐ GC ☐ MC Pittenger PD / Private DEATON

Defendant: ☒ Present ☐ Not Present ☐ In Custody ☐ PD Appointed ☐ PD Denied ☐ Waived Attorney

☐ Defendant failed to appear. Bond forfeited/ROR revoked. Bench Warrant issued. Bond \$ _____

☐ Advised Rights ☐ Not Guilty ☐ Guilty / Admit ☐ Written Guilty Plea ☐ No Contact ☐ Pre-Trial Release Order

SET FOR SENTENCING. A TO TAKE CONDITIONAL GUILTY

PLEA. A TO OBTAIN EVAL. A TO FILE APPEAL +

MOTION TO STAT.

☐ Release Defendant, This Case Only

NOTICE OF HEARING

☒ Sentencing on 6/2/14 at 2:30 am/pm w/ Judge Steckel

☐ Court Trial Conference on _____ at _____ am/pm w/ Judge _____

☐ Court Trial on _____ at _____ am/pm w/ Judge _____

☐ Pre-Trial Conference on _____ at _____ am/pm w/ Judge _____

☐ Jury Trial on _____ at _____ am/pm w/ Judge _____

☐ _____ on _____ at _____ am/pm w/ Judge _____

☐ Contact the Ada County Public Defender, 200 W. Front St., Rm. 1107, Boise, ID 83702, telephone (208) 287-7400.

You must appear as scheduled above. Failure to do so will result in a warrant being issued for your arrest, or default judgment may be entered if you are charged with an infraction.

ADA COUNTY COURTHOUSE, 200 W. FRONT STREET, BOISE, ID 83702

I hereby certify that copies of this notice were served as follows:

Defendant: Hand Delivered ☒ Via Counsel ☐ Signature _____

Defense Atty: Hand Delivered ☒ Intdept Mail ☐ _____

Prosecutor: Hand Delivered ☒ Intdept Mail ☐ _____

CHRISTOPHER D. RICH, Clerk of the District Court

By: _____ DATED _____

Deputy Clerk

Magistrate Judge (for Pre-Trial Memorandum)

000060

[REV 10-2013]

JUN 02 2014

CHRISTOPHER D. RICH, Clerk
By CASSANDRA JOHNSTON
DEPUTY

SUPERVISED MISDEMEANOR PROBATION ORDER

Defendant Daniel Chernobieff Case No. MD201313271
Address _____ Date Ordered 6/2/14
_____ Judge Steele
Phone _____ Prosecuting Attorney Simmons
Defense Attorney Deaton

You have been sentenced to the following term of supervised probation: 6/2/14 (1 year)
commencing on 6/2/14 and terminating on 6/2/15

IT IS HEREBY ORDERED THAT you comply with the following terms and conditions of supervision:

Initial Probation Contact: You understand that you MUST contact Ada County Misdemeanor Probation at the address below within one business day to schedule an appointment. Failure to do so may result in the issuance of a warrant for your arrest. You will bring all court paperwork with you to this appointment.

Ada County Misdemeanor Probation
8601 W. Emerald Suite 150, Boise, Idaho 83704
Phone: 208-577-3380 / FAX: 208-577-3389

Laws: You shall respect and obey all laws and comply with all terms of probation as ordered by the court or directed by a probation officer. You shall comply with all lawful requests of a probation officer.

Compliance: You shall comply with all lawful direction given to you by a probation officer.

Notification: You will notify your probation officer within 24 hours (or within one business day) following any contact with law enforcement, including but not limited to citations, arrests, or investigations. You will fully cooperate in a respectful manner with any law enforcement requests and advise them that you are on supervised probation and provide them with the name of your assigned probation officer.

Residence/Contact: You shall notify your probation officer prior to making any changes to your residence, phone numbers or email addresses. You will submit any changes to your probation officer for approval. You must notify your probation officer within one business day of making any approved changes. You will maintain a contact phone with voice messaging. You are responsible for checking this phone number at least daily and complying with any instructions given by a probation officer.

Reporting: You shall check in at the Ada County Misdemeanor Probation Office on a monthly basis, unless directed otherwise by a probation officer. You shall truthfully submit any written or oral reports requested by a probation officer.

Attendance: You understand that failure to appear for any assigned/scheduled appointments with any service providers, drug testing service, or your probation officer may result in a probation violation being filed with the court or the imposition of discretionary jail time.

Controlled Substances and Alcohol: You will not use, possess, or distribute any alcoholic beverages, controlled substances or intoxicants while on probation unless lawfully prescribed by a licensed physician. You shall submit to any testing of breath and bodily fluids for these substances as directed by the court, law enforcement, treatment providers or the probation officer. You shall be truthful in said testing and shall not ingest substances or take any actions in an attempt to mask or alter the test results. Any attempts shall be considered the same as a presumptive positive result. You shall pay all fees and costs of such testing.

Employment/Education: You will obtain and maintain appropriate full-time employment and/or participate in an educational program as directed by a probation officer.

Electronic Monitoring Device/Alcohol Monitoring Device/Interlock Device: You understand that you may be placed on electronic monitoring device/alcohol monitoring device/Interlock device as deemed necessary by the probation officer. You shall pay the daily monitoring costs and any costs associated with any damages or lost equipment.

Court Fines and Restitution: You shall pay any and all court fines, restitution and other costs as ordered by the Court and defined in your fine agreement.

Programs & Treatment: You shall cooperate and successfully complete any and all assessments and/or treatment programs ordered by the Court. You shall pay all costs and fees for the programs in a timely manner.

Classes or Treatment: You shall comply, cooperate and successfully complete any assessments and/or treatment program required by the probation officer. You shall pay all costs and fees for the programs in a timely manner.

Review Hearings: You understand that you must appear before the Court as scheduled to review your compliance with the conditions of your probation.

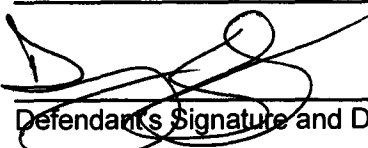
Costs of Supervision: You shall pay the costs of supervision on a prepaid monthly basis to Ada County Misdemeanor Probation in the amount of \$75.00 per month, unless adjusted by the Court.

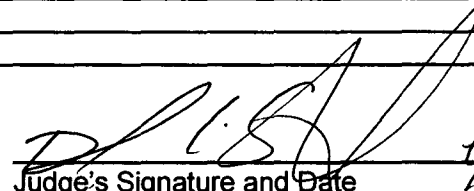
Release of Information: You authorize the release and exchange of confidential information to and from your probation officer, including but not limited to evaluations, medical history, reports, and treatment records related to your probation.

Travel: You will not leave the state of Idaho without first obtaining a travel permit from your probation officer.

Additional Instructions: You will comply with any and all additional instructions given by a probation officer.

Other:

 6/2/2014
Defendant's Signature and Date

 4/2/14
Judge's Signature and Date

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT, ADA COUNTY

☐ JUDGMENT OF CONVICTION

☒ PROBATION ORDER

STATE OF IDAHO vs.

Daniel J. Chernobieff

☒ WITHHELD JUDGMENT

Expires 6/2/16

FILED <u>4/14</u>	AT <u>333</u> .M.
CHRISTOPHER D. RICH CLERK OF THE DISTRICT COURT	
BY <u>[Signature]</u>	Deputy

CASE NO.

MD13-13271

Digital

3437

Prosecuting Agency: ☒ AD ☐ BC ☐ EC ☐ GC ☐ MC

State's Attorney:

Gmmms

DEFENDANT having been charged with the following offenses:

Count 1. DUI excessive 18-8004 + 8005

Count 2. _____

Count 3. _____

Count 4. _____

DEFENDANT WAS: ☒ Present ☐ In Custody ☐ Not Present ☐ Interpreter Present ☒ Advised of all rights and penalties per ICR 5.11, IMCR 5(f)

Represented by: [Signature] COURT ENTERS JUDGMENT AFTER: ☒ Vol Guilty Plea ☐ Trial - Found Guilty

Defendant Waived Right: ☒ To All Defenses ☐ Against Self-Incrimination ☐ To Jury Trial ☐ To Confront and Cross Examine Accuser(s) ☐ To Counsel

☐ ORDERED: DEFENDANT'S DRIVING PRIVILEGES SUSPENDED 365 days beginning 5/2/14; or

☐ CONSECUTIVE TO ANY CURRENT SUSPENSION ☒ Absolute Suspension 365 days ☒ Interlock from 5/2/15 to 5/2/16

☒ ORDERED: DEFENDANT TO PAY TO THE CLERK: 50 ☒ Apply cash bond \$ 500

Count 1: Fine/Penalty \$ 2,000 W/ \$ 1,000 Suspended + CT Costs \$ 197 = \$ _____

Count 2: Fine/Penalty \$ _____ W/ \$ _____ Suspended + CT Costs \$ _____ = \$ _____

Count 3: Fine/Penalty \$ _____ W/ \$ _____ Suspended + CT Costs \$ _____ = \$ _____

Count 4: Fine/Penalty \$ _____ W/ \$ _____ Suspended + CT Costs \$ _____ = \$ _____

☐ Reimburse Public Defender \$ _____ ☐ Workers' Comp (\$60/hr) \$ _____ TOTAL = \$ _____

Restitution \$ 240 Defendant shall make 6 EQUAL MONTHLY PAYMENTS BEGINNING ONE MONTH FROM TODAY

☒ ORDERED: DEFENDANT TO BE INCARCERATED IN: ☒ County Jail ☐ Juvenile Detention Center

Count 1: 365 days w/ 375 Suspended - Credit 1 Total = 9 TOTAL DAYS TO SERVE = 9

Count 2: _____ days w/ _____ Suspended - Credit _____ Total = _____ ☐ Concurrent to Case number(s): _____

Count 3: _____ days w/ _____ Suspended - Credit _____ Total = _____

Count 4: _____ days w/ _____ Suspended - Credit _____ Total = _____ ☐ Concurrent ☒ Consecutive

to all cases to any other cases

☐ _____ days must be fully completed, with **NO OPTIONS** available. ☐ _____ days must be fully completed, with **INTERIM JAIL** available.

☐ Pay or Stay \$ _____ ☐ In-Custody _____ SAP _____ ABC ☐ Interlock Funds (after use of any cafeteria funds)

☐ If approved by the Ada County Sheriff's Office, defendant is allowed to serve in _____ County at defendant's expense.

☒ THE FOLLOWING options offered by the County Sheriff are available to the defendant only IF defendant meets requirements of the program.

☒ All Options 9 days; ☐ If defendant is in custody, release and re-book for any options.

☐ Any combo of the following Options: Wk Rls _____ days; SLD _____ days; SCS _____ hours; Hs. Arr. (2/1) _____ days (1/1) _____ days

☐ PROBATION CONDITIONS: Supervised Probation Expires: 6/2/15 Unsupervised Probation Expires: 6/2/16

☒ No new crimes ☐ Classes/treatment per P.O. ☐ Discretionary jail to P.O. _____ ☐ Alcohol Monitor Device Authorized

Programs Ordered: (Defined on Responsibilities Form) ☐ No Alcohol Poss/Consume ☐ Refuse no evidentiary test for drugs/alcohol (BAC)

☒ Alcohol/Drug Ed hrs 32 ☐ Anger Management hrs _____ ☐ Tobacco Ed hrs _____ ☐ Driving School hrs _____

☒ Victim's Panel ☐ Theft classes hrs _____ ☐ Domestic Violence Treatment Weeks _____ ☐ Cog Self Change _____

☐ OTHER _____

☒ Defendant accepted terms and conditions of probation and received a copy of this form and supplemental Notice of Responsibilities after Sentencing.

☐ PLEA AND SENTENCE VIA DEFENSE COUNSEL AUTHORIZED ☐ IN CHAMBERS PER WRITTEN GUILTY PLEA

DEFENDANT [Signature] JUDGE [Signature] Number 200 Date of Order 4/2/14

☐ Release Defendant this case only

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHRISTOPHER D. RICH, Clerk
By CASSANDRA JOHNSTON
DEPUTY

IN THE MATTER OF THE SUSPENSION OF THE
DRIVER'S LICENSE OF:

Daniel J Chernobleff
1411 E Symphony Ct
Boise, ID 83706

Defendant.

DOB: _____
DL or SSN: _____

Citation No: ISP0238021

Case No: CR-MD-2013-0013271

ORDER SUSPENDING DRIVER'S LICENSE
FOR A PLEA OF GUILTY OR FINDING OF
GUILTY OF OFFENSE

WJ b Interlock Device x

Interlock Start: 5/2/15 End: 5/2/16

TO: THE IDAHO TRANSPORTATION DEPARTMENT AND THE ABOVE NAMED DEFENDANT

The Defendant having P6 of the offense of Driving Under the Influence, I violation of Section 18-8004 M, which authorizes or requires the suspension of the driving privileges of the Defendant by the Court, and the Court having considered the same.

NOW, THEREFORE, IT IS HEREBY ORDERED, that the driving privileges and driver's license of the above named Defendant is hereby suspended for a period of 365 days commencing on 5/2/14 abs

- ☐ 5/2/14; or
☐ at the end of any current suspension.

YOU ARE FURTHER NOTIFIED, that the expiration of the period of this suspension does not reinstate your driver's license and you must make application to the Idaho Transportation Department for reinstatement of your driver's license after the suspension period expires.

Dated: 6/2/14

Judge: DR

I hereby certify that the foregoing is a true and correct copy of the original Order Suspending Driver's License For a Plea of Guilty or Finding of Guilty of Offense entered by the Court and on file in this office. I further certify that copies of this Order were served as follows:

Defendant: Daniel J Chernobleff Mailed _____

Hand Delivered CO

Department of Transportation, Boise:

Mailed CO

Hand Delivered _____

Dated: 6/2/14

CHRISTOPHER D. RICH
Clerk of the Court

By: _____
Deputy Clerk

FILED 10/2/14 AT 332 M.
 CHRISTOPHER D. RICH,
 CLERK OF THE DISTRICT COURT
 BY [Signature]
 Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

Case No. CR-MD-2013-13271

vs.

DEFENDANT'S WRITTEN GUILTY PLEA

CHERNOBIEFF, DANIEL

Defendant.

I, DANIEL CHERNOBIEFF, the above-named defendant, desire to plead guilty as set forth below, to the charge(s) in this case. I am 36 years of age and have had 16th years of education. I am not under the influence of any alcohol, drugs, or other mind-affecting substances at this time. I am fully aware of the present proceedings and of their legal significance. I have discussed my decision to plead guilty with my attorney, JAKE DEASON (through Interpreter NIA). No one has made any promises, threats, or other inducements to get me to plead guilty in this action. If I am on probation or parole, this guilty plea may be used against me as the basis for a probation or parole violation.

I understand that the judge is not bound by any plea agreement between the state and myself, and the maximum punishment allowed under state law has been explained to me. The only agreement that has been made in this case is as follows:

* CONDITIONAL GUILTY - DEFENDANT TO APPEAL DECISION ON MOTION TO SUPPRESS *

OPEN PELS.

In entering this guilty plea, I am fully aware that I am waiving any defenses I may have to these charges. Additionally, I am waiving certain important rights such as:

- | | |
|---|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> To be represented by an attorney, and have one appointed if I cannot afford one. <input checked="" type="checkbox"/> To enter a plea in open court before a judge. <input checked="" type="checkbox"/> To have a jury trial or court trial. <input checked="" type="checkbox"/> To not be compelled to testify against myself. <input checked="" type="checkbox"/> To confront witnesses against me and subpoena my own witnesses. | <ul style="list-style-type: none"> <input checked="" type="checkbox"/> To require the state to prove every element of my charges beyond a reasonable doubt. <input checked="" type="checkbox"/> To appeal this conviction, although the sentence may be appealed. <input checked="" type="checkbox"/> To personally address the court prior to sentencing. <input checked="" type="checkbox"/> If I am not a U.S. citizen, the entry of a guilty plea or making of factual admissions could have consequences of deportation, removal, inability to obtain legal status in the U.S., or denial of an application for U.S. citizenship. |
|---|--|

THEREFORE, I hereby authorize my attorney to enter a guilty plea in the above-captioned action, pursuant to M.C.R. 6(d) and State v. Poynter, 34 Idaho 504, 205 P. 561, 208 P. 871 (1921). This plea is given knowingly, intelligently, and voluntarily.

DATED this 2 day of JUNE, 20 14.

Defendant

Address:

2144 N. Leann Way
Meridian, ID 83646
Daniel Chernobieff

Telephone:

208-416-1338

Counsel for Defendant

Deputy Prosecuting Attorney

Magistrate Judge

DEFENDANT'S WRITTEN GUILTY PLEA

000065 10-2011]

NOTICE OF DEFENDANT'S RESPONSIBILITIES AFTER SENTENCING

Defendant: Daniel J Chernobieff

Address: 1411 E Symphony Ct
Boise, ID 83706

Phone:

Prosecuting Agency: Ada County Prosecutor

NO. CR-MD-2018-0013271 FILED 3:30
P.M.
Date Ordered: 6/2/2014 JUN 02 2014
Judge: DANIEL L STECKEL
CHRISTOPHER D. RICH, Clerk
By LAURIE JOHNSON
DEPUTY

HAVING PLEAD GUILTY TO OR BEEN FOUND GUILTY, I AGREE TO THE FOLLOWING TERMS OF SENTENCING: FOR ANY JAIL TIME ORDERED BY THE COURT.

Within 48 hours (between 7:30 a.m. and 4:00 p.m., Monday - Friday except holidays), the defendant shall make immediate contact in person, pay any required fee, cooperate with, and follow all instructions of said agencies. Defendant shall not report to the Day Reporting Center with any trace of alcohol in his or her system. Failure to do so will result in the issuance of a warrant for your arrest.

Sheriff Court Services

200 W. Front Street 1st Floor
(208) 287-7185

OR

Day Reporting Center

7180 Barrister - Boise, Idaho
(208) 577-3460

For any **Juvenile Detention/Community Service** report to: 400 N. Benjamin, Suite 201.

Juvenile Defendant to contact the shift Supervisor at 287-5632 or 287-5629, within 5 working days.

Total Days to Serve = _____ ☐ Concurrent ☐ Consecutive to any other cases. ☐ All Options Offered
☐ Juvenile Community Service hrs: _____ to be completed by _____

FOR ANY TERM OF PROBATION ORDERED BY THE COURT;

UNSUPERVISED

- ☒ Notify Court of change of address ☒ Commit no crimes ☒ Pay all fines, costs, restitution & reimbursements
☒ Enroll/complete court approved education or treatment program(s) as ordered ☒ Refuse no evidentiary testing

SUPERVISED- Contact Probation Services below within 24 hours. Take any and all court paperwork from your sentencing on this case. *Failure to do so will result in the issuance of a warrant for your arrest.*

Ada County Misdemeanor Probation Services - call within 24 hours, (208) 577-3380
8601 W Emerald St. Suite 150
Boise, ID 83704

FOR ANY AND ALL CLASSES ORDERED BY THE COURT;

The defendant shall make immediate contact with the court-approved programs as chosen below, within 24 hours, pay any required fee, arrive at each class on time, and fully cooperate with program sponsors. Also, take all court paperwork from your sentencing on this case to each of the programs. Failure to complete these programs as ordered may result in the issuance of a warrant for your arrest for a violation of probation.

- ☒ Alcohol/Drug Ed. hrs 32 ☐ Anger Management hrs _____ ☐ Tobacco Ed hrs _____ ☐ Driving School hrs _____
☒ Victim's Panel ☐ Theft Classes hrs _____ ☐ Domestic Violence Treatment weeks _____ ☐ Cog Self Change
☐ Other _____

Provider Chosen by defendant: (Place stickers here)

Defendant's Signature

Date

6/2/2014

ASCENT
BEHAVIORAL HEALTH SERVICES
366 SW 5th Ave. Suite 100
Meridian, Idaho 83642
Ph. 208-898-9755 Fax 208-898-2544

RELEASE OF INFORMATION: I hereby request and authorize the Department of Veterans Affairs to release information regarding my completion of the programs specified on this Judgment to Ada County Misdemeanor Probation Services (if supervised probation was ordered) or to the prosecuting agency as listed above (if defendant is ordered unsupervised probation)

Defendant's Signature

Last 4 - SSN

Date

000066

[Rev. 8/12]

JUN 02 2014

CHRISTOPHER D. RICH, Clerk
By CASSANDRA JOHNSTON
DEPUTY

Greg H. Bower
Ada County Prosecuting Attorney

Sarah Q Simmons
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700
Fax: (208)-287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-MD-2013-0013271
)	
vs.	)	ORDER FOR RESTITUTION
	)	AND JUDGMENT
Daniel James Chernobieff,)	
)	
Defendant.)	
_____)	

WHEREAS, on the 2nd day of June 2014, a Judgment of Conviction was entered against the Defendant Daniel James Chernobieff; and therefore pursuant to Idaho Code §18-8003(2) and based on evidence presented to this Court;

IT IS HEREBY ORDERED, that the Defendant, Daniel James Chernobieff, shall make restitution to the victim(s) and/or law enforcement agency(ies) in the following amounts of:

CC. AS 6/2/14

IDAHO STATE POLICE BLOOD DRAWS
IDAHO STATE CRIME LAB DUI

\$140.00
\$100.00

TOTAL:

\$240.00

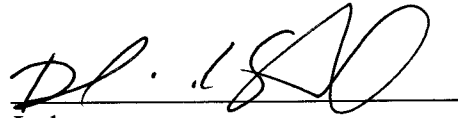
Post judgment interest on said restitution amount will accrue from the date of this Order and Judgment at the rate specified in Idaho Code §28-22-104.

FURTHER, pursuant to I.C. 19-5305 this Order may be recorded as a judgment against the Defendant, Daniel James Chernobieff, and the listed victim(s) may execute as provided by law for civil judgments.

FURTHER, it is the responsibility of the Defendant to notify the Restitution Department (208-287-7700) if at any time a victim collects by means of the civil judgment.

IT IS SO ORDERED.

DATED this 2nd day of June 2014.


Judge

FILED 4/2/14 AT 32 .M.
CHRISTOPHER D. RICH,
CLERK OF THE DISTRICT COURT
By [Signature]
Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

Chernobaiiff Daniel

Defendant.

Case No. AMMD 1113 13271

ORDER RELEASING CASH BOND

IT IS HEREBY ORDERED that the cash bond in the amount of \$ \$500
heretofore posted on behalf of the above-named defendant be and the same is hereby ordered
released by the Clerk of the Court as follows:

- ☐ Forfeit as final disposition
- ☐ Forfeit for failure to appear
- ☐ Return to Payor _____
- ☒ Pay fines and costs due and owing in this case and return the remaining amount to
Payor at the following address:

[Signature]
JUDGE

4/2/14
Date

Date: 9/20/2013

Fourth Judicial District Court - Ada County

NO. 0101704

Time: 02:10 PM

Receipt

Received of: Chernobieff, Daniel James

\$ 500.00

Five Hundred and 00/100 Dollars

1411 E Symphony Ct
Boise 83704

Case: CR-MD-2013-0013271

Defendant: Chernobieff, Daniel J

Cash bond:

500.00

ACTC

Payment Method: Transfer

Amount Tendered: 500.00

Christopher D. Rich, Clerk of the Court

By: _____
Deputy Clerk

Clerk: TCPARKTL

000070

189

JACOB D. DEATON, ISB #7470
LAW OFFICE OF JACOB D. DEATON, PLLC
PO Box 191010
Boise, Idaho 83719
Tel: (208) 685-2350
Fax: (208) 685-2351

Attorney for Defendant Chernobieff,

NO. 1044 FILED
A.M. PM

JUN 12 2014

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

RECEIVED IN TRANSCRIPTS

6/19/14 - RN

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	Case No. CR-MD-2013-0013271
)	
v.	)	NOTICE OF APPEAL
)	
DANIEL CHERNOBIEFF,)	
)	
Defendant/Appellant.)	
_____)	

TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEY AND THE CLERK OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Daniel Chernobieff, appeals against the above named respondent to the Idaho Supreme Court from the judgment entered in the above entitled action, Honorable Judge Daniel Steckel presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(2) and/or 12(a) I.A.R.
3. The issue to be raised on appeal is whether:

mo

1. The Court erred in denying the Defendant's Motion to Suppress under the Fourth Amendment of the U.S. Constitution when Trooper Comorosky ordered Defendant's blood to be involuntarily drawn without a warrant after Defendant refused to submit to a breathalyzer test where the State failed to demonstrate the existence of exigent circumstances that would justify an exception to the general rule that the Fourth Amendment requires that the State obtain a warrant before conducting searches or seizures.

2. No order has been entered sealing all or any portion of the record.

3. (a) A reporter's transcript is requested.

(b) The appellant requests the preparation of the following portions of the reporter's transcript in ☒ hard copy ☐ electronic format ☐ both:

4. Oral argument from the hearing held on January 10, 2014.

5. Oral argument from the hearing held on February 4, 2014.

6. No order has been entered sealing all or any portion of the record.

5. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R:

10/31/2013 Motion to Suppress

11/15/2013 State's Object to Motion to Suppress

8. I certify:

(a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Ada County Prosecuting Attorney, 200 W. Front St., Boise Idaho 83702

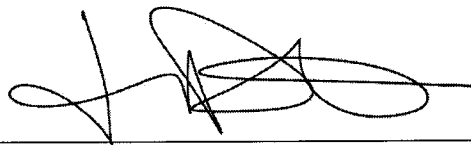
(b) That the clerk of the district court will be paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for preparation of the clerk's or agency's record will be paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 12th day of June, 2014.

A handwritten signature in black ink, appearing to read 'J. Deaton', written over a horizontal line.

JACOB D. DEATON
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of June, 2014, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Ada County Prosecuting Attorney
200 W. Front Street
Boise, Idaho 83617
Fax: **(208) 287-7719**

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile



JACOB D. DEATON

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

NO. _____ FILED 3:20
A.M. _____ P.M.

STATE OF IDAHO
Plaintiff,

vs.

Daniel J Chernobieff
1411 E Symphony Ct
Boise, ID 83706
Defendant.

DOB: [REDACTED]
DL or SSN: [REDACTED]

JUN 12 2014

CHRISTOPHER D. RICH, Clerk
By CORRINE PRESLEY
DEPUTY

Case No: CR-MD-2013-0013271

NOTIFICATION OF PENALTIES FOR
SUBSEQUENT VIOLATION OF
DRIVING UNDER THE INFLUENCE (DUI)
I.C. 18-8004

NOTICE: If you plead guilty to or are found guilty of driving under the influence (DUI), including withheld judgments, the penalties will be as follows:

1. A FIRST DUI is a misdemeanor, and you:
 - (a) May be jailed for up to six months; and fined up to \$1000; and
 - (b) Shall have your driving privileges suspended for up to 180 days. NOTICE: YOUR DRIVING PRIVILEGE WILL BE SUSPENDED FOR 30 DAYS. THIS IS AN ABSOLUTE SUSPENSION WITH NO DRIVING PRIVILEGES.
2. A SECOND DUI within 10 years is a misdemeanor, and you:
 - (a) Shall be jailed for at least 10 days and, up to 1 year, with the first 48 hours to be served consecutively, an five (5) days of which must be served in jail, and may be fined up to \$2000; and
 - (b) Shall have your driving privileges suspended for 1 year following your release from jail, with absolutely no driving privileges of any kind.
 - (c) Shall only drive a motor vehicle equipped with a functioning ignition interlock system following the the on (1) year mandatory license suspension period.
3. A DUI IS A FELONY IF IT IS: (1) a third DUI within 10 years; or (2) a subsequent DUI with a previous felony DUI, Aggravated DUI within 15 years; or (3) a second DUI within 10 years where in both cases there was an alcohol concentration of 0.20 or more; and you:
 - (a) Shall be sentenced to the custody of the State Board of Corrections for up to 10 years (but if the court imposes a jail sentence instead of the state penitentiary, it shall be for a minimum of 30 days), the first 48 hours to be served consecutively, and ten (10) days of which must be served in jail and may be fined up to \$5000; and
 - (b) Shall have your driving privileges suspended for at least 1 year and up to 5 years after release from custody, with absolutely no driving privileges of any kind.
 - (c) Shall only drive a motor vehicle equipped with a functioning ignition interlock system following the one (1) year mandatory license suspension period.

I HAVE READ THIS ENTIRE DOCUMENT; I HAVE HAD IT EXPLAINED TO ME; AND I HAVE RECEIVED A COPY

Dated: 6/2/2014
[Signature]
Defendant

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JUN 19 2014

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

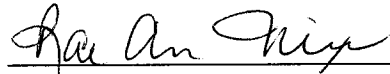
Defendant/Appellant.

ESTIMATED COST OF APPEAL TRANSCRIPT

000076

Failure to pay the required fees in a timely manner may be grounds for sanctions as the District Court deems appropriate, which may include DISMISSAL OF THE APPEAL.

Dated this 19th day of June, 2014.




RAE ANN NIXON
Transcript Coordinator

CERTIFICATE OF MAILING

I certify that on this 19th day of June, 2014, a true and correct copy of the Estimated Cost of Appeal Transcript was forwarded to Appellant or Appellant's attorney of record, by first class mail, at:

JACOB D. DEATON
ATTORNEY AT LAW
POST OFFICE BOX 191010
BOISE ID 83719



RAE ANN NIXON
Transcript Coordinator

189

JACOB D. DEATON, ISB #7470
LAW OFFICE OF JACOB D. DEATON, PLLC
PO Box 191010
Boise, Idaho 83719
Tel: (208) 685-2350
Fax: (208) 685-2351

NO. _____
A.M. _____ FILED P.M. 138

JUN 23 2014

CHRISTOPHER D. RICH, Clerk
By SARA WRIGHT
DEPUTY

Attorney for Defendant Chernobieff,

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	Case No. CR-MD-2013-0013271
)	
v.	)	AMENDED NOTICE OF APPEAL
)	
DANIEL CHERNOBIEFF,)	
)	
Defendant/Appellant.)	
_____)	

TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S
ATTORNEY AND THE CLERK OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Daniel Chernobieff, appeals against the above named respondent to the District Court from the Fourth Judicial District from the judgment entered in the above entitled action, Honorable Judge Daniel Steckel presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(2) and/or 12(a) I.A.R.
3. The issue to be raised on appeal is whether:

1. The Court erred in denying the Defendant's Motion to Suppress under the Fourth Amendment of the U.S. Constitution when Trooper Comorosky ordered Defendant's blood to be involuntarily drawn without a warrant after Defendant refused to submit to a breathalyzer test where the State failed to demonstrate the existence of exigent circumstances that would justify an exception to the general rule that the Fourth Amendment requires that the State obtain a warrant before conducting searches or seizures.

2. No order has been entered sealing all or any portion of the record.

3. (a) A reporter's transcript is requested.

(b) The appellant requests the preparation of the following portions of the reporter's transcript in ☒ hard copy ☐ electronic format ☐ both:

4. Oral argument from the hearing held on January 10, 2014.

5. Oral argument from the hearing held on February 4, 2014.

6. No order has been entered sealing all or any portion of the record.

5. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R:

10/31/2013 Motion to Suppress

11/15/2013 State's Object to Motion to Suppress

8. I certify:

(a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Ada County Prosecuting Attorney, 200 W. Front St., Boise Idaho 83702

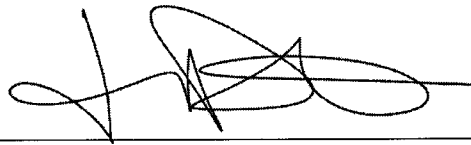
(b) That the clerk of the district court will be paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for preparation of the clerk's or agency's record will be paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 12th day of June, 2014.

A handwritten signature in black ink, appearing to read 'J. Deaton', is written over a horizontal line.

JACOB D. DEATON
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of June, 2014, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

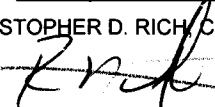
Ada County Prosecuting Attorney
200 W. Front Street
Boise, Idaho 83617
Fax: **(208) 287-7719**

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile



JACOB D. DEATON

FILED
Tuesday, June 24, 2014 at 10:37 AM
CHRISTOPHER D. RICH, CLERK OF THE COURT

BY: 
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

DANIEL J CHERNOBIEFF

Defendant.

Case No. CR-MD-2013-0013271

NOTICE OF REASSIGNMENT

NOTICE IS HEREBY GIVEN That the above-entitled case has been reassigned to the Honorable JUSTICE GERALD F. SCHROEDER.

DATED Tuesday, June 24, 2014.

CHRISTOPHER D. RICH
Clerk of the District Court

By: 
Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on Tuesday, June 24, 2014, I have delivered a true and accurate copy of the foregoing document to the following parties in the method indicated below.

ADA COUNTY PROSECUTOR
INTERDEPARTMENTAL MAIL

JACOB D DEATON
ATTORNEY AT LAW
PO BOX 190010
BOISE ID 83719-1010

CHRISTOPHER D. RICH
Clerk of the Court

By: 
Deputy Clerk

182

NO. _____
A.M. _____ FILED P.M. 2:30

JUN 26 2014

CHRISTOPHER D. RICH, Clerk
By RAE ANN NIXON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

DANIEL CHERNOBRIEFF,


Defendant/Appellant.

)
)
)
) Case No. CRMD-2013-0013271
)
) NOTICE OF PAYMENT OF ESTIMATED
) COST OF APPEAL TRANSCRIPT
)
)
)
)

I hereby certify that the estimated cost of transcript in the above-entitled matter has been paid to the court on June 25, 2014.

Said transcript will be filed with the Clerk of the District Court on or before thirty-five (35) days from date of this notice.

Dated this 26th day of June, 2014.



RAE ANN NIXON
Ada County Transcript Coordinator

✓
NOTICE OF PAYMENT OF APPEAL TRANSCRIPT

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JUL 31 2014

CHRISTOPHER D. RICH, Clerk
By RAE ANN NIXON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	Case No. CRMD-2013-0013271
)	
vs.	)	NOTICE OF LODGING
	)	APPEAL TRANSCRIPT
DANIEL CHERNOBIEFF,)	
)	
Defendant/Appellant.)	
_____)	

To: SARA Q. SIMMONS, Attorney for Respondent.

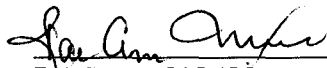
To: JACOB D. DEATON, Attorney for Appellant.

PLEASE TAKE NOTICE THAT a transcript of the proceeding in this action was lodged with the Court on **July 30, 2014**.

YOU ARE NOTIFIED that you may pick up a copy of said transcript at the District Clerk's Office, Ada County Courthouse, 200 West Front Street, Boise, ID 83702.

Unless objections to the content of the transcript are received within twenty-one (21) days from the date of mailing of this notice, such transcript shall be deemed settled.

Date this 30th day of July, 2014.



RAE ANN NIXON
Deputy Clerk of the District Court

I hereby certify that on this 30th day of July, 2014, a true and correct copy of the Notice of Lodging was sent via US Mail to:

ADA CO. PROSECUTING ATTORNEY
200 W. FRONT ST. STE. 3191
BOISE, ID 83702
SARA Q. SIMMONS

JACOB DEATON
ATTORNEY AT LAW
6126 W. STATE ST.
BOISE ID 83703



RAE ANN NIXON

Deputy Clerk of the District Court

AUG 14 2014

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS
CHRISTOPHER D. RICH, Clerk
By RIC NELSON
DEPUTY

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

DANIEL CHERNOBIEFF,

Defendant/Appellan.

Case No. CR-MD-2013-13271

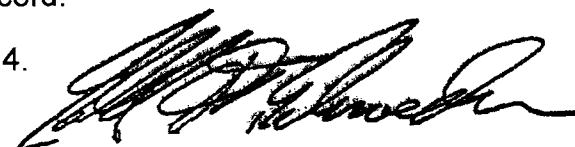
**ORDER GOVERNING
PROCEDURE ON APPEAL**

Notice of Appeal having been filed herein, and it appearing that a transcript of all the testimony of the original trial or hearing has been provided by appellant to resolve the issues on appeal:

It is ORDERED:

- 1) That Appellant's brief shall be filed and served within 35 days from the date of the filing of this Order.
- 2) That Respondent's brief shall be filed and served within 28 days after service of appellant's brief.
- 3) That Appellant's reply brief, if any, shall be filed and served within 21 days after service of respondent's brief.
- 4) That either party may notice the matter for oral argument in writing after all briefs are filed, and that if within fourteen (14) days after the final brief is filed, neither party does so notice for oral argument, the Court may deem oral argument waived and decide the case on the briefs and the record.

Dated this 14 day of August, 2014.



Gerald F. Schroeder
Senior District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 14 day of August, 2014, I mailed a true and correct copy of the within instrument to:

JACOB D DEATON
ATTORNEY AT LAW
PO BOX 191010
BOISE ID 83719

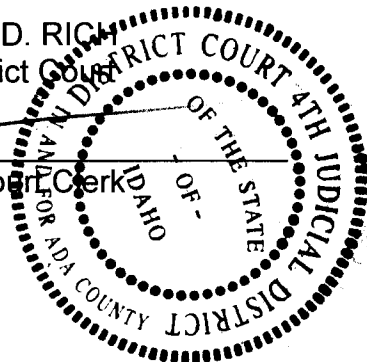
ADA COUNTY PROSECUTING ATTORNEY
VIA: INTERDEPARTMENTAL MAIL

ADA COUNTY TRANSCRIPTS DEPARTMENT
VIA: INTERDEPARTMENTAL MAIL

CHRISTOPHER D. RICH
Clerk of the District Court

By: 

Deputy Court Clerk



AUG 22 2014

CHRISTOPHER D. RICH, Clerk
By RIC NELSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff/Respondent

DANIEL CHERNOBIEFF,

Defendant/Appellant

Case No. CR-MD-13271

**NOTICE OF FILING
TRANSCRIPT ON APPEAL**

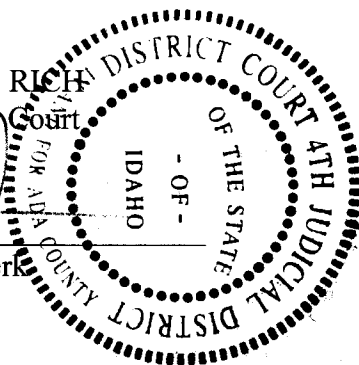
Pursuant to I.R.C.P. 83(p), the transcript of the proceedings dated February 4, 2014, is now filed.

Dated this 22 day of August, 2014.

CHRISTOPHER D. RICH
Clerk of the District Court

By: RNF

Deputy Clerk



CERTIFICATE OF MAILING

I hereby certify that on this 22 day of August, 2014, I mailed (served) a true and correct copy of
the within instrument to:

JACOB D. DEATON
ATTORNEY AT LAW
2484 N STOKESBERRY PL, STE 150
PO BOX 191010
BOISE, ID 83719

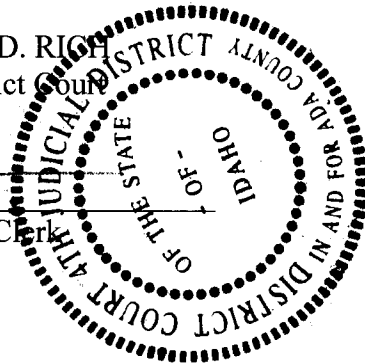
ADA COUNTY PROSECUTING ATTORNEY
VIA: INTERDEPARTMENTAL MAIL

ADA COUNTY TRANSCRIPTS DEPARTMENT
VIA: INTERDEPARTMENTAL MAIL

CHRISTOPHER D. RICH
Clerk of the District Court

By: 

Deputy Clerk



NO. _____
A.M. _____ P.M. _____

SEP 19 2014

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

JACOB D. DEATON, ISB #7470
LAW OFFICE OF JACOB D. DEATON, PLLC
PO Box 191010
Boise, Idaho 83719
Tel: (208) 685-2350
Fax: (208) 685-2351

Attorney for Defendant Chernnobieff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

v.

DANIEL CHERNNOBIEFF

Defendant.

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)
)
)
)

Case No. CR-MD-2013-0013271

APPELLANT'S BRIEF

APPELLANT'S BRIEF - 1

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STATEMENT OF THE CASE

A. Nature of the Case/Question Presented

Did the State violate Defendant's rights under the Fourth Amendment of the U.S. Constitution when Trooper Comorosky ordered Defendant's blood to be involuntarily drawn without a warrant after Defendant refused to submit to a breathalyzer test where the State failed to demonstrate the existence of exigent circumstances that would justify an exception to the general rule that the Fourth Amendment requires that the State obtain a warrant before conducting searches or seizures?

B. Statement of Facts and Course of Proceedings

The Defendant was stopped on September 11, 2013 by Trooper Ben Comorosky of the Idaho State Police. Following a DUI investigation, the police officer arrested the Defendant and took him to the Ada County Jail. The trooper contacted Ada County Prosecuting Attorney Scott Bandy to prepare a request for a search warrant. That prosecutor could not reach the on-call judge. Instead of waiting to receive a proper warrant, the trooper drew the Defendant's blood. No warrant was ever sought or obtained in this case.

On February 4, 2014, the Defendant's Motion to Suppress was heard by the Magistrate in this matter. The Magistrate denied the Motion and this appeal was taken following a conditional guilty plea, reserving the Defendant's right to this appeal.

STANDARD OF REVIEW

The decision in this case was a discretionary one for the magistrate. When a reviewing court reviews a decision under an abuse of discretion standard, the reviewing court examines the decision to determine whether the trial court (1) recognized the issue as one of discretion; (2) acted within the outer limits of its discretion; (3) acted consistently with the legal standards applicable to the available choices; and (4) reached its decision through an exercise of reason. *Rowan v. Riley*, 139 Idaho 49, 54, 72 P.3d 889, 894 (2003). In this brief, the Defendant demonstrates that the magistrate failed to act consistently with the legal standards applicable to its decision.

ARGUMENT

There is no more intrusive search of a citizen than being forced to undergo an unwanted medical procedure. A blood draw, while certainly not the most invasive of medical procedures, is still a highly intrusive search carried out inside a person's body.

A warrantless blood draw violates a citizen's right to be free from unreasonable searches and seizures. It is therefore incumbent upon the State to justify any warrantless blood draw. Warrantless blood draws can be justified by the exigent circumstances exception. *See, e.g., State v. Woolery*, 116 Idaho 368, 775 P.2d 1210 (1989) (Defendant involved in multi-car collision resulting in death, and defendant was taken to the hospital); *State v. Cooper*, 136 Idaho 697, 39 P.3d 637 (Ct. App. 2001) (Defendant involved in multi-car collision resulting in death, and defendant was flown to hospital by helicopter); *State v. Curtis*, 106 Idaho 483, 680 P.2d 1383 (Ct. App. 1984) (Defendant involved in multi-car collision resulting in death, and defendant was taken to hospital by ambulance); *State v. DeWitt*, 145 Idaho 709, 184 P.3d 215 (Ct. App. 2008) (Defendant seriously injured in accident, and taken to hospital by ambulance). However, in this case, the law enforcement officer was not faced with any emergency or other exigent circumstances that would allow the State to justify this warrantless blood draw under that exception.

I. A Blood Draw is a Search and thus Requires a Warrant.

A blood draw is a severely intrusive search of a person's body which brings it under the ambit of the Fourth Amendment. A blood draw is a search. *Woolery*, 116 Idaho at 370, 755 P.2d at 1212. Both the Idaho and United States Constitution protect citizens from unreasonable searches and seizures. U.S. Const. amend. IV; Id. Const. art. 1, § 17. Because of this protection, any warrantless search is presumptively invalid. *Woolery*, 116 Idaho at 370, 755 P.2d at 1212.

If a search is conducted without a warrant, the burden falls on the State to justify why police saw fit to disregard the citizens Constitutional rights. *Id.*

The warrant requirement is so central to our Fourth Amendment that warrantless searches are presumed to be unreasonable. "In a long line of cases, this Court has stressed that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment — subject only to a few specifically established and well delineated exceptions." *Thompson v. Louisiana*, 469 U.S. 17, 19-20 (1984) (internal quotation omitted). "The exceptions are jealously and carefully drawn, and there must be a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative." *Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971) (internal quotation omitted). "In cases where the securing of a warrant is reasonably practicable, it must be used." *Carroll v. United States*, 267 U.S. 132, 156 (1925).

The Defendant believes that magistrates serve an important function in our legal system. "Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law." *McDonald v. United States*, 335 U.S. 451, 455 (1948). While officers on scene are likely to be hurried, excited and intent on securing an arrest, a neutral and detached magistrate serves to safeguard the constitutional liberties of the suspect. "[T]he detached scrutiny of a neutral magistrate, [] is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer engaged in the often competitive enterprise of ferreting out crime." *United States v. Chadwick*, 433 U.S. 1, 9 (1977) (internal quotation omitted) (abrogated on other grounds by *California v. Acevedo*, 500 U.S. 565 (1991)).

Simply stated, without a magistrate standing guard between police and citizens, the Fourth Amendment becomes meaningless.

II. Exceptions to the Warrant Requirement.

The exigent circumstances exception, while not a *per se* rule, is a recognized exception to the Fourth Amendment warrant requirement. Any exigent circumstances exception must be supported by evidence that the totality of the circumstances justify it; it is not a *per se* rule.

The Supreme Court has recognized only a few well delineated situations in which the exigent circumstances exception applies. *See, e.g., United States v. Santana*, 427 U.S. 38, 42-43 (1976) (hot pursuit of a fleeing felon); *Warden v. Hayden*, 387 U.S. 294, 298-299 (1967) (same); *Schmerber v. California*, 384 U.S. 757, 770-771 (1966) (destruction of evidence); *Cupp v. Murphy*, 412 U.S. 291, 296 (1973) (same); *Ker v. California*, 374 U.S. 23 (1963) (same); *Michigan v. Tyler*, 436 U.S. 499, 509 (1978) (ongoing fire). "Prior decisions of this Court, however, have emphasized that exceptions to the warrant requirement are few in number and carefully delineated." *Welsh v. Wisconsin*, 466 U.S. 740, 749 (1984) (internal quotation omitted). "Police bear a heavy burden when attempting to demonstrate an urgent need" for a warrantless search under the exigent circumstances exception. *Id.*, 466 U.S. at 749-750. "When an officer undertakes to act as his own magistrate, he ought to be in a position to justify it by pointing to some real immediate and serious consequences if he postponed action to get a warrant." *Id.*, at 751 (citing *McDonald*, 335 U.S. at 460).

The Fourth Amendment does not require officers to delay their investigation if doing so would endanger the lives of themselves or others. *Warden v. Hayden*, 387 U.S. 294 (1967); *Brigham City v. Stuart*, 547 U.S. 398 (2006). When officers are faced with a situation where the delay in obtaining a warrant could result in the destruction of evidence, an exigency may also

exist. *Ker*, 374 U.S. at 40-41; *Schmerber*, 384 U.S. 757. When determining whether there is a risk of destruction of evidence sufficient to excuse a warrant courts also consider the seriousness of the offense. *Welsh*, 466 U.S. at 751. Just because evidence will be destroyed in a particular case does not necessarily mean that an exigent circumstances exception applies. See, e.g., *Johnson*, 333 U.S. 10 (warrantless search not appropriate simply because opium fumes were dissipating); *Chapman v. United States*, 365 U.S. 610 (1961) (warrantless search not appropriate simply because whiskey mash smell may dissipate); *Welsh*, 466 U.S. 740 (warrantless seizure of defendant not appropriate simply because blood alcohol level was dissipating).

Idaho Courts have also recognized that "[t]he exigent circumstances exception allows agents of the State to conduct a warrantless search when there is a 'compelling need for official action and no time to secure a warrant.'" *State v. Worthington*, 138 Idaho 470, 472, 65 P. 3d 211, 213 (Ct. App. 2002) (quoting *Tyler*, 436 U.S. at 509). "The exigent circumstances exception does not apply where there is time to secure a warrant." *State v. Robinson*, 144 Idaho 496, 501, 163 P. 3d 1208, 1213 (Ct. App. 2007).

This exception does not serve to streamline police procedures or investigations. "The mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment." *Mincey*, 437 U.S. at 393. "The investigation of crime would always be simplified if warrants were unnecessary. But the Fourth Amendment reflects the view of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law." *Id.*

Exigent circumstances cases are always fact-specific and require the State to show that immediate action was necessary to prevent flight, safeguard the police or public, or stop destruction of evidence. The word itself, exigent, connotes urgency and implies that immediate

action is necessary. Whether sufficient exigent circumstances existed at the time of the arrest or search to obviate the need to obtain a warrant should always be a fact intensive analysis based upon the particular facts of the case.

In sum, Defendant disputes any argument by the State that questions about whether an exigent circumstances exception applies can be determined in a *per se* manner. Each case must be examined on its own facts.

III. There is no *Per Se* Exigency Exception in all DUI Cases.

Under the exigent circumstances exception, police may conduct warrantless searches and seizures when the facts available indicate that an "emergency exists in which the delay necessary to obtain a warrant would threaten the loss or destruction of evidence" or life. *United States v. Chapel*, 55 F.3d 1416, 1419 (9th Cir. 1995).

The Supreme Court recognized that a warrantless blood draw could fall under the exigent circumstances exception in *Schmerber v. California*. In *Schmerber*, the defendant was involved in a serious car accident that required his hospitalization and a police investigation of the crash. 384 U.S. at 771. The Court engaged in an exigent circumstances analysis and concluded that "[g]iven these special facts", this warrantless blood draw falls within the exception. *Id.* The fact the defendant's BAC was diminishing was only one of the factors the Court considered in reaching its conclusion. Also important to the Court's analysis was the fact that the officer had to spend time to conduct an accident investigation, and the fact that defendant had to be taken to the hospital to be assessed for injuries. *Id.* Given these two additional delays, coupled with the fact that defendant's BAC was dropping, the Court found that exigent circumstances existed to negate the warrant requirement. The Court concluded by stating, "[i]t bears repeating, however, that we reach this judgment only on the facts of the present record." *Id.*, at 772.

The U.S. Supreme Court recently decided the issue of the constitutionality of warrantless, involuntary blood draws in *Missouri v. McNeely* 569 U.S. ____ (2013). In *McNeely* the Court declared that "the Fourth Amendment will not tolerate adoption of an overly broad categorical approach that would dilute the warrant requirement where significant privacy interests are at stake." *Id.*

IV. There were no Exigent Circumstances Present in this Case.

Unlike *Schmerber*, *Woolery*, *Cooper*, *Curtis* and *DeWitt*, the officer in this case was not faced with an emergency or time constraint. Officer Lawrence did not have to investigate a serious accident. The defendant in this case was not being taken to a hospital via ambulance and was not in need of any medical treatment. Additionally, officer Lawrence had the assistance of officer Bruce at his disposal. The simple fact is, officer Lawrence had ample time to secure a warrant but chose to act as his own magistrate.

An exigency only exists when police would be unable to secure a search warrant within a reasonable time. The fact that officers may have to wait half an hour or an hour before drawing a suspect's blood does not, on its own, constitute an exigent circumstance. While it is true that blood alcohol dissipates over time, it does not dissipate rapidly and it does not completely disappear as do drugs flushed down a toilet. The average adult eliminates alcohol at a rate of roughly .015 per hour. Additionally, a person's blood alcohol level will continue to rise for 30 to 50 minutes after he stops drinking.


There is no reason why officers in this case could not have secured a search warrant in a reasonable amount of time prior to forcibly drawing Defendant's blood. In at least one Idaho case, an officer in a small town was able to secure a search warrant in a timely manner prior to drawing blood. *State v. Green*, 149 Idaho 706, 707, 239 P.3d 811, 812 (Ct. App. 2010). The

defendant in *Green* was pulled over on suspicion of drunk driving at 1:06 a.m. in Hailey, Idaho. *Id.* Hailey has a population of fewer than 8,000. The defendant refused to submit to a breathalyzer at 2:03 a.m., and the officer began preparing an application for a warrant. *Id.* Around 2:55 a.m., the warrant was issued and defendant was taken to have his blood drawn. *Id.* Defendant was ultimately convicted of drunk driving. *Id.* The State has failed to show why the officers in this case could not have done the exact same thing the officer in *Green* did, get a warrant prior to forcibly entering a citizens' body to collect evidence.

CONCLUSION

For the foregoing reasons, Appellant requests that this Court reverse the decision of the magistrate court.

DATED this 19th day of September, 2014.



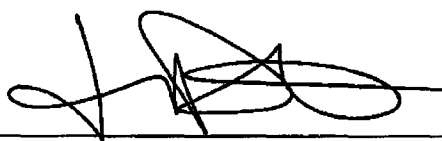
JACOB DEATON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of September, 2014, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

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☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



JACOB D. DEATON

130

OCT 17 2014

CHRISTOPHER D. RICH, Clerk
By MAURA OLSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff/Appellant,)
vs.)
)
DANIEL JAMES CHERNOBIEFF)
)
Defendant/Respondent.)
_____)

13271
CASE NO. CR-MD-2013-0011740

RESPONDENT'S BRIEF

Appeal from the Magistrate Court of the Fourth Judicial
District of the State of Idaho, in and for the County of Ada

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This case is on appeal to the District Court from an order by the Honorable Daniel Steckel, Ada County Magistrate for the Fourth Judicial District, denying the defendant's, Daniel Chernobieff, motion to suppress evidence of driving under the influence. The defendant filed a motion to suppress, alleging that the State's warrantless blood draw violated his rights. In denying the motion, the Magistrate Court held that the exigency exception to the Fourth Amendment's warrant requirement was met in this case. Chernobieff appealed, and the State now argues that the Magistrate Court correctly denied the motion to suppress evidence.

I. FACTS AND PROCEDURAL HISTORY

On September 11, 2013 at approximately 11:11 p.m., Trooper Ben Comorosky stopped a 1993 green Chevrolet C15 for failing to stop at a stop sign at Gem Street and Meridian Road. Trooper Comorosky made contact with the driver and he identified him as Daniel J. Chernobieff, the defendant in this case, with his Hawaii driver's license. Trooper Comorosky observed the defendant place two breath mints in his mouth and noted that the defendant had difficulty retrieving his documents because his fingers were fumbling so much. At 11:22 p.m. Trooper Matthew Sly responded to assist at the scene.

When Trooper Sly approached the vehicle, he observed the strong smell of alcohol coming from inside, as well as the defendant's glassy and bloodshot eyes. Trooper Sly asked the defendant to step out of his vehicle. The defendant responded with slow, slurred speech and asked why he needed to exit his vehicle. Trooper Sly stated that based on the strong smell of alcohol he needed to make sure the defendant was safe to drive. The defendant again asked "why?" Trooper Sly repeated himself, again asking the defendant to exit his vehicle. The defendant complied and did exit.

Once out of the vehicle, the defendant continued to be uncooperative. He refused to participate in the standardized field sobriety tests. Trooper Sly began by asking the defendant where he was coming from, a question he had to ask twice. The defendant never answered, but instead inquired, "can I answer you when you accuse me of anything, or?" As he spoke Trooper Sly could smell the odor of alcohol on the defendant's breath. The defendant became agitated saying, "you know what I don't believe you, honestly I think a, I don't have anything to say to you actually." Trooper Sly asked the defendant to clarify what he meant. In response the defendant repeated, "I don't have anything to say to you." Trooper Sly asked the defendant if he was refusing to participate in the standardized field sobriety tests, again stating that he could

smell alcohol on the defendant's breath. The defendant responded, "I am saying to you sir, I don't think you are giving me an appropriate...." The defendant then stopped speaking, pausing for several seconds, then continuing, "You are not giving me an opportunity to explain myself." Trooper Sly observed that the defendant seemed to be having a difficult time formulating what he was trying to say. Nonetheless, Trooper Sly gave the defendant the opportunity to explain himself, asking him to start from the beginning. The defendant said, "I do not think I am going to answer any of your questions, that's it." Trooper Sly again asked the defendant if he was refusing to perform the field sobriety tests. The defendant paused and said, "I don't think you are looking out for my best interest," and after a pause, "I don't think it is in my best interest to answer any of your questions." Trooper Sly asked the defendant if he had anything else to say, to which the defendant replied "no."

Trooper Sly arrested the defendant for driving under the influence of alcohol and/or drugs. The Trooper handcuffed him, searched him for weapons, and placed him in the rear seat of his patrol vehicle. The defendant listened to the ALS Advisory during the fifteen minute waiting period. After the waiting period was complete, the defendant refused to submit to a breath test, indicating to Trooper Sly that he refused because he did not trust the Trooper. Trooper Sly asked the defendant if he would allow Sargent John Burke, who had arrived on scene to assist at 11:29 p.m., to give the breath test. The defendant again stated that he did not trust Trooper Sly and that he also did not trust Sargent Burke.

After the defendant's refusals of the breath test, Trooper Sly called the on-call prosecutor for Ada County, Scott Bandy, to inform Bandy of the incident. Trooper Sly then transported the defendant to the Ada County Jail in his patrol vehicle. Trooper Sly made another call to request a phlebotomist be dispatched to the Ada County Jail. Upon arrival at the jail, Trooper Sly again called Prosecutor Bandy. Prosecutor Bandy informed Trooper Sly that he had attempted to call the on-call Ada County Judge to obtain a telephonic warrant that would authorize a blood draw from the defendant. However, Prosecutor Bandy explained that he was unable to reach the judge and Prosecutor Bandy authorized the blood draw due to exigent circumstances.

A phlebotomist arrived at the Ada County Jail and performed a blood draw on the defendant. The blood samples were sent to the Idaho State Police Forensics lab for processing. The test results indicated that the defendant had a blood alcohol content of .226.

The defendant is charged with driving under the influence of alcohol, excessive alcohol concentration, under Idaho Code §18-8004. At the time of the October 23, 2013 pre-trial conference, the blood test results were not yet back. The results of the defendant's blood draw were subsequently received and disclosed, and on October 31, 2013, the defendant filed a motion to suppress those results. The State objected to the motion, and a hearing was held on February, 4, 2014. The Magistrate Court denied the defendant's motion to suppress, holding that exigent circumstances allowed the State to complete the blood draw without a warrant. 2/4/14 Hr'g Tr. 40. In so holding, the Magistrate Court found that the defendant delayed the evidentiary process, and that the prosecutor made a good faith effort to contact the on-call magistrate. 2/4/14 Hr'g Tr. 41.

After this ruling was entered, the defendant entered a conditional guilty plea on June 2, 2014, and timely filed this appeal.

II. ISSUE ON APPEAL

The State rephrases the sole issue on appeal:

1. Whether the Magistrate Court erred in determining that the results of a warrantless blood draw can be admitted as evidence for driving under the influence.

III. STANDARD OF REVIEW

On review of a decision from the magistrate court, the district court acts as an appellate court, not as a trial court. *State v. Kenner*, 121 Idaho 594, 596, 826 P.2d 1306, 1308 (1992). The standard of appellate review of a suppression motion is bifurcated. *State v. Hunter*, No. 40950, 2014 WL 1777986, at *2 (Ct.App. May 6, 2014). When a decision on a motion to suppress is challenged, the reviewing court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to the facts as found. *Id.* (citing *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App. 1996)).

"If the findings of fact are based on substantial evidence, even if the evidence is conflicting, they will not be overturned on appeal." *Roell v. Boise City*, 134 Idaho 214, 216, 999 P.2d 251, 253 (2000).

IV. ARGUMENT

As noted above, the sole issue on appeal is whether the district court correctly held that the State's warrantless blood draw properly fit into one of the exceptions to the warrant requirement of the Fourth Amendment to Constitution. Drawing blood from a driver in a driving under the

influence case is a seizure. It is well settled that to do so, the State must either have a warrant, or the facts surrounding a blood draw must fall within an exception to the warrant requirement.

The administration of a blood alcohol test constitutes a seizure of the person and a search for evidence within the purview of the Fourth Amendment to the United States Constitution. *Schmerber v. California*, 384 U.S. 757, 767, 86 S.Ct. 1826, 1834, 16 L.Ed.2d 908, 917 (1966); *State v. Worthington*, 138 Idaho 470, 472, 65 P.3d 211, 213 (Ct.App.2002). Searches and seizures conducted without a warrant are presumptively unreasonable. *Schmerber*, 384 U.S. at 770, 86 S.Ct. at 1835, 16 L.Ed.2d at 919; *State v. Curtis*, 106 Idaho 483, 488, 680 P.2d 1383, 1388 (Ct.App.1984). To overcome the presumption, the state bears the burden of establishing two prerequisites. First, the state must prove that a warrantless search fell within a well-recognized exception to the warrant requirement. *State v. Diaz*, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007). Second, the state must show that even if the search is permissible under an exception to the warrant requirement, it must still be reasonable in light of all of the other surrounding circumstances. *Id.*

State v. DeWitt, 145 Idaho 709, 711-12, 184 P.3d 215, 217-18 (Ct. App. 2008).

There are a number of possible exceptions to the warrant requirement. "Such an exception exists when the search or seizure is conducted with proper consent. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); *State v. Whiteley*, 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct.App.1993); *State v. Rusho*, 110 Idaho 556, 558, 560, 716 P.2d 1328, 1330, 1332 (Ct.App.1986)." State v. Nickerson, 132 Idaho 406, 410, 973 P.2d 758, 762 (Ct. App. 1999). Exigent circumstances in another well settled exception to the warrant requirement. State v. Robinson, 144 Idaho 496, 499, 163 P.3d 1208, 1211 (Ct. App. 2007).

The State submits that each of these exceptions applies in these circumstances.

The facts in this case constitute the exigent circumstances to meet the warrant exception for a blood draw.

The Magistrate Court made its decision on exigency grounds. As the State argued in its opposition to the motion to suppress, the circumstances in this case satisfy the warrant exception in cases of exigency.

"[W]arrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Brigham City*, 547 U.S. at —, 126 S.Ct. at 1947, 164 L.Ed.2d at 657 (quoting *Mincey v. Arizona*, 437 U.S. 385, 393-94, 98 S.Ct. 2408, 2414, 57 L.Ed.2d 290, 301 (1978)). A warrantless search under this exception must be strictly circumscribed by the nature of the exigency that justifies the intrusion. *State v. Buterbaugh*, 138 Idaho 96, 99, 57 P.3d 807, 810 (Ct.App.2002).

State v. Robinson, 144 Idaho 496, 499, 163 P.3d 1208, 1211 (Ct. App. 2007). Exigent circumstances may justify warrantless search of the body through a blood draw. See, Schmerber v. California, 384 U.S. 757, 770 (1966).

The Supreme Court concluded that the elimination of alcohol does not alone create a *per se* rule of exigency in Driving Under the Influence cases. The Court ruled that there must be a totality of the circumstances analysis in each case. Missouri v. McNeely, 569 U.S. ___, ___; 133 S. Ct. 1552 (2013). Such analysis will reflect that the collection of blood in this case was done in exigent circumstances sufficient to serve as an exception to the warrant requirement.

The Supreme Court opinion in McNeely, is premised on the idea that blood alcohol is not a “now or never” proposition, because the rate of alcohol elimination can be determined to within a reasonable range. Missouri v. McNeely, 569 U.S. ___, ___; 133 S. Ct. 1552, 1561 (2013). The Supreme Court assumes that retrograde extrapolation is available to the State.¹ The majority opinion presumes that so long as some alcohol is in the defendant’s system when the test is administered, there is a formulaic method through which the actual blood alcohol concentration at the time the defendant was driving can be determined. It is largely based on this premise that the Supreme Court concludes that “special facts” in addition to inevitable elimination of alcohol must be necessary to create an exigency. See Id. at 1557.

However, in the State of Idaho, retrograde extrapolation is not permitted. In the event that an evidentiary test for blood alcohol reveals a result that is under .08, even if it is substantially after the defendant last drove, that person cannot generally be prosecuted.² Idaho Code Section 18-8004(2) provides that, “[a]ny person having an alcohol concentration of less than 0.08, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, by a test requested by a police officer shall not be prosecuted for driving under the influence of alcohol except as provided in subsection (3) [drug dui], subsection (1)(b) [commercial vehicle dui] or subsection (1)(d) [underage dui] of this section.” Thus the laws of the State of Idaho create a need for a much quicker process than the circumstances contemplated by the Supreme Court. That is to say, that the elimination of alcohol at even the rate of .015 to

¹ This analysis ignores the fact that intoxicants other than alcohol may be at issue as well.

² There is an exception for cases where the defendant fails to provide a valid sample on a breath test. “A shallow breath sample testing at below .08 does not inherently show that the individual’s true breath alcohol concentration is less than .08. Consequently, it does not *ipso facto* bar prosecution by the terms of Section 18-8004(2).” State v. Turbyfill, 38579, 2012 WL 4465773 (Idaho Ct. App. Sept. 28, 2012), review denied (Nov. 29, 2012).

.02, even if accurate, as suggested by the Supreme Court, is enough that the State's evidence can be lost in short order. See, McNeely, 569 U.S. at ____, 133 S. Ct. at 1575. Thus, the legal environment in Idaho should be seen as one of the "special facts" supporting a finding of exigency.

There were certain features of this stop that contribute to the totality of the circumstances analysis as well. The defendant's own conduct added to the exigency insofar as he was slow and uncooperative, thus delaying the officer. The Magistrate found that the Defendant was uncooperative, which contributed to the exigency in this case: "All I'm saying is he wasn't cooperating. Because he didn't cooperate, that triggered another set of events." 2/4/14 Hr'g Tr. 44. This factual finding was supported by Trooper Sly's testimony that the defendant refused to submit to a breath test after refusing to complete field sobriety tests. Additionally, the defendant was uncooperative and difficult to interact with during the traffic stop. He had difficulty communicating, continually questioned the officer, and refused to contribute in any way to the investigation. Absent physical resistance, the defendant did everything he could to delay the process.

Although the Supreme Court believes that, "in addition to technology-based developments, jurisdictions have found other ways to streamline the warrant process, such as by using standard-form warrant applications for drunk driving investigations." Missouri v. McNeely, 569 U.S. ____, ____; 133 S. Ct. 1552, 1562 (2013). The Supreme Court notes that there were such forms available in the relevant jurisdiction when McNeely was arrested. Id. FN 5. However, such forms were not available in Ada County on the date of the defendant's arrest. Rather, on the date of incident, the procedure involved an on-call prosecutor contacting an on-call magistrate to secure a search warrant on a case-by-case basis. In this case, on-call prosecutor Bandy made four to five attempts to contact the Magistrate. 2/4/14 Hr'g Tr., p. 23-24. It is clear from the testimony offered at the motion hearing that the process for obtaining a warrant in the middle of the night had broken down and no alternative method was reasonably available.

The Supreme Court states the rate of elimination as .015 to .02 percent per hour. Missouri v. McNeely, 569 U.S. ____, ____; 133 S. Ct. 1552, 1575 (2013). Since the on-call magistrate was unavailable—and since there is only one on-call magistrate—the next opportunity for a magistrate-issued warrant would be when the courthouse opened, which would be roughly 9

hours after the traffic stop began. During such a delay, even a driver with a .20 BAC could avoid prosecution for a standard DUI. Due to the nature of the law in Idaho, if law enforcement had waited longer to perform a blood draw and the test resulted in a blood alcohol concentration of less than 0.200, the defendant could not be prosecuted for driving under the influence, excessive, regardless of what his blood alcohol levels were at the time he was actually driving.³ In light of these circumstances, the officer who arrested the defendant correctly perceived that there was not time to get a warrant and that the circumstances were exigent.

In addition to the inevitable diminution of the alcohol in the defendant's blood, the law in Idaho and the circumstances of this case, where law enforcement attempted to obtain a warrant but was unable to do so because the judge could not be reached, constitute exigent circumstances that satisfy the exception to the warrant requirement. Taking the totality of the circumstances into consideration, the needs of law enforcement were sufficiently compelling and the "exigencies of the situation" great enough that the warrantless search was reasonable under the Fourth Amendment.

Additionally, the defendant had a 0.226 blood alcohol content at the time his blood was drawn. By driving with such a significant blood alcohol level the defendant placed the general public at significant risk. The prosecutor and trooper acted in good faith and in reliance on Idaho Code § 18-8002, *Diaz* and *Wheeler*, as well as the exception based on exigent circumstances, when they made the decision to have the defendant's blood drawn. The public interest supports admission of the results.

In the alternative, consent is another well-recognized exception to the warrant requirement and would apply in this case.

Although the Magistrate Court expressly rested its opinion on exigency, the State also presented the alternative grounds of consent. 2/4/14 Hr'g Tr. 40-41. Consent is another well-recognized exception to the warrant requirement. See *State v. Wheeler*, 149 Idaho 364, 370, 233 P.3d 1286, 1292 (Ct.App.2010) citing *Diaz*, 144 Idaho at 303, 160 P.3d at 742. In Idaho, by driving on the public roadways, drivers demonstrate that they have consented to evidentiary testing pursuant to I.C. 18-8002.

³ In the motion hearing, defense counsel argued that in the absence of a blood draw, the state could still proceed on an impairment theory of DUI. 2/4/14 Hr'g Tr. P. 34. However, the State is clearly precluded from doing so if an evidentiary test comes back below .08. See I.C. § 18-8004(2). Additionally, this argument also sidesteps the fact that charging an excessive DUI requires a certain BAC. Mr. Chernobieff would avoid an excessive DUI through delay and refusal, essentially benefiting from his behavior.

By terms of this statute, anyone who accepts the privilege of operating a motor vehicle upon Idaho's highways has thereby consented in advance to submit to a BAC test. McNeely v. State, 119 Idaho 182, 187, 804 P.2d 911, 916 (Ct.App.1990). By implying consent, the statute removes the right of a driver to refuse an evidentiary test. Goerig v. State, 121 Idaho 26, 29, 822 P.2d 545, 548 (Ct.App.1992). Hence, although an individual has the physical ability to prevent a test, there is no legal right to withdraw the statutorily implied consent. Woolery, 116 Idaho at 372, 775 P.2d at 1214; State v. Burris, 125 Idaho 289, 291, 869 P.2d 1384, 1386 (Ct.App.1994).

State v. Nickerson, 132 Idaho 406, 410, 973 P.2d 758, 762 (Ct. App. 1999).

In Diaz, The Idaho Supreme Court found that the blood draw at issue in the case “fell within a well-recognized exception to the warrant requirement,” because Diaz had given his implied consent to the testing. State v. Diaz, 144 Idaho 300, 303, 160 P.3d 739 (2007). The Court also performed the second step in the analysis by reviewing whether the search was “reasonable” in light of the circumstances. The Court examined whether the blood draw was done in a medically acceptable manner. The Court discussed the administration of the test at a hospital by a qualified hospital technician, among other facts, and concluded that under the totality of the circumstances, the test was reasonable. Id.; See also State v. Worthington, 138 Idaho 470, 65 P.3d 211 (Ct.App. 2002). In the case at bar, Mr. Dalton blood was drawn by a trained phlebotomist in a medically acceptable manner. In fact, the manner by which the blood draw was performed is not contested by the Defendant here.

The Idaho Court of Appeals in State v. Wheeler found, that:

Consent is a well-recognized exception to the warrant requirement. Diaz, 144 Idaho at 303, 160 P.3d at 742. “Any person who drives or is in actual physical control of a motor vehicle” in Idaho consents to be tested for alcohol at the request of a peace officer with reasonable grounds to believe the person drove under the influence. I.C. § 18–8002(1); Diaz, 144 Idaho at 302, 160 P.3d at 741. In Diaz, the Court found that the defendant gave his consent to a blood draw by driving in Idaho, despite his repeated protests. Id. at 302–03, 160 P.3d at 741–42. In view of the Supreme Court's decision in Diaz, we conclude that a protest to a blood draw does not invalidate consent created by a person's actions and statute.

149 Idaho 364, 370, 233 P.3d 1286, 1292 (Ct. App. 2010). Thus protests to the blood draw in the current case do not invalidate the consent. Such an analysis contemplates that the driver had already taken advantage of the privilege of driving on the public roadways prior to being stopped. Having gotten the benefit of the bargain of implied consent, the driver may not void consent already given.

In Missouri v. McNeely, the Supreme Court identified the sole issue they examined as, “whether the natural metabolization [sic] of alcohol in the bloodstream presents a *per se* exigency that justifies an exception the Fourth Amendment’s warrant requirement for nonconsensual blood testing in all drunk-driving cases.” 569 U.S. at ____; 133 S. Ct. at 1556. Neither the statement of the issue under analysis nor the Court’s holding implicate the consent exception to the warrant requirement.

There may be some argument that because the Supreme Court identified certain states as having implied consent laws with certain restrictions, the Court thereby endorsed those restrictions. However, the existence of implied consent laws at the state level was used by the Supreme Court to document certain findings:

wide-spread state restrictions on nonconsensual blood testing provide further support for our recognition that compelled blood draws implicate a significant privacy interest. They also strongly suggest that our ruling today will not “severely hamper effective law enforcement.” *Garner*, 471 U.S., at 19, 105 S.Ct. 1694.

McNeely, 569 U.S. at ____; 133 S. Ct. at 1567. Identifying these statutes for such a limited purpose does not amount to a binding opinion of the Court on the restrictions listed in those various statutes. Missouri does have an implied consent statute, however the Supreme Court did not examine that statute as a possible exception to the warrant requirement in this case. Further, Missouri’s implied consent law has not historically provided for forced tests. Due to a recent statutory change, the question of whether it does now is a matter yet to be decided in the Missouri courts. (See Missouri v. McNeely, 2011 WL 2455571 (Missouri Court of Appeals, 2011).) The United States Supreme Court opinion in McNeely did not comment on the validity of the Idaho implied consent law or one like it. Thus, the dicta in McNeely does not change the status of the implied consent law in Idaho.

The blood draw in the instant case is admissible under this analysis. It was taken by a driver who was driving on the public roadways and who had therefore given consent. It was taken in a medically acceptable manner and was reasonable under the totality of the circumstances. As such, implied consent provides an alternate rationale for this Court to uphold the Magistrate Court’s decision on other grounds.

If this Court finds that neither exception applies, admission of the blood draw evidence is still appropriate.

Even in the event the Court finds that there is not an applicable exception to the warrant requirement, the State submits that the defendant is not deserving of exclusion of the evidence as a remedy. The defendant was a .226 blood alcohol content at the time his blood was drawn and by driving with such a significant blood alcohol level had placed the general public at significant risk. The officer acted in good faith and in reliance on 18-8002, Diaz and Wheeler when he made the decision to have the defendant's blood drawn. The public interest supports admission of the results.

The State submits that the exclusionary rule is not the proper remedy.

The exclusionary rule is instead a judicially created means of deterring illegal searches and seizures. *United States v. Calandra*, 414 U.S. 338, 348, 94 S.Ct. 613, 620, 38 L.Ed.2d 561 (1974). As such, the rule does not "proscribe the introduction of illegally seized evidence in all proceedings or against all persons," *Stone v. Powell*, *supra*, at 486, 96 S.Ct., at 3049, but applies only in contexts "where its remedial objectives are thought most efficaciously served," *United States v. Calandra*, *supra*, at 348, 94 S.Ct., at 620; see also *United States v. Janis*, 428 U.S. 433, 454, 96 S.Ct. 3021, 3032, 49 L.Ed.2d 1046 (1976) ("If ... the exclusionary rule does not result in appreciable deterrence, then, clearly, its use in the instant situation is unwarranted"). Moreover, because the rule is prudential rather than constitutionally mandated, we have held it to be applicable only where its deterrence benefits outweigh its "substantial social costs." *United States v. Leon*, 468 U.S., at 907, 104 S.Ct., at 3412.

Pennsylvania Bd. of Prob. & Parole v. Scott, 524 U.S. 357, 363, 118 S. Ct. 2014, 2019, 141 L. Ed. 2d 344 (1998).

The exclusionary rule's sole purpose is to deter future Fourth Amendment violations, *e.g.*, *Herring v. United States*, 555 U.S. 135, 141, 129 S.Ct. 695, 172 L.Ed.2d 496, and its operation is limited to situations in which this purpose is "thought most efficaciously served," *United States v. Calandra*, 414 U.S. 338, 348, 94 S.Ct. 613, 38 L.Ed.2d 561. For exclusion to be appropriate, the deterrence benefits of suppression must outweigh the rule's heavy costs. Under a line of cases beginning with *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677, the result of this cost-benefit analysis turns on the "flagrancy of the police misconduct" at issue. *Id.*, at 909, 911, 104 S.Ct. 3405. When the police exhibit "deliberate," "reckless," or "grossly negligent" disregard for Fourth Amendment rights, the benefits of exclusion tend to outweigh the costs. *Herring*, *supra*, at 144, 129 S.Ct. 695. But when the police act with an objectively reasonable good-faith belief that their conduct is lawful, or when their conduct involves only simple, isolated negligence, the deterrent value of suppression is diminished, and exclusion cannot "pay its way." See *Leon*, *supra*, at 909, 919, 908, n. 6, 104 S.Ct. 3405; *Herring*, *supra*, at 137, 129 S.Ct. 695. Pp. 2426 – 2428.

Davis v. United States, 131 S. Ct. 2419, 2422, 180 L. Ed. 2d 285 (2011). The State recognizes that the Idaho Supreme Court has declined to apply the Leon good faith exception to Idaho. State v. Koivu, 152 Idaho 511, 272 P.3d 483 (2012). However, this officer acted within the well authorized and common practices of the State, which had been explicitly authorized by the Idaho Supreme Court, Idaho Court of Appeals, and the Idaho State Legislature. In addition, the Schmerber case was decided 47 years ago and has been considered by all to be the law of the land since. To now punish the officer and the public by suppressing the evidence is not a proper application of the exclusionary rule. Thus the State submits that the exclusionary rule is not a proper remedy in this case.

V. CONCLUSION

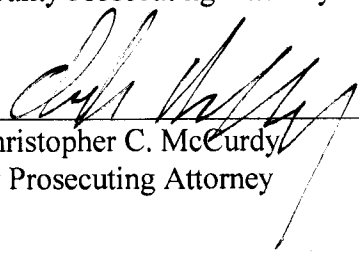
Although the Magistrate held on other grounds, the State submits that the Court's inquiry need go no further than the implied consent statute. Mr. Chernobieff had, by driving on the public roadways, consented to evidentiary testing. That testing was completed in a medically sound manner and the results of the blood draw should be deemed as admissible. The blood draw results would also be admissible due to the exigent circumstances surrounding this investigation. The factual and legal environment of this case created an exigency for the officer. As the magistrate held, the defendant's conduct contributed to the delay, creating additional urgency for the evidentiary test.

Because retrograde extrapolation is not available to the State, the evidence that the defendant was above the legal limit of alcohol was being eliminated as time passed. Because the on-call process for obtaining a warrant had broken down, significant delay would potentially bar the State from prosecution. Given the totality of the circumstances, the situation fell within the exigency exception to the warrant requirement as well.

In the event that the Court finds that neither of these exceptions to the warrant requirement are satisfied, the State submits that the blood draw results should still be seen as admissible and the Magistrate's ruling should still be upheld. To rule otherwise is to invite a manifest injustice. This event and countless others like it involve a driver putting the public at great risk and the officer responding with the explicit authorization of the Courts and the legislature. Not only did the officer have good faith, the public policy and community protection interests at issue lean heavily in favor of admitting the evidence. Based on the above, the State respectfully requests this Court to affirm the decision of the Magistrate Court.

DATED this 17 day of October, 2014.

GREG H. BOWER
Ada County Prosecuting Attorney


By: Christopher C. McCurdy
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of November 2013, I caused to be served a true and correct copy of the foregoing document to: **JACOB D. DEATON, LAW OFFICE OF JACOB D. DEATON, 6126 W. State Street, Boise, Idaho 83703** by the method indicated below:

☐ INTERDEPARTMENTAL MAIL
☒ U.S. MAIL (Postage Prepaid)
☐ FAX TRANSMISSION
☐ HAND DELIVERY



NO. _____
A.M. _____ P.M. 12

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA NOV 19 2014
200 W Front St Rm 1190
Boise, Idaho 83702

CHRISTOPHER D. RICH, Clerk
By RIC NELSON
DEPUTY

STATE OF IDAHO,
Plaintiff.

vs.

Daniel J Chernobieff
Defendant.

DOB: [REDACTED]
DL or SSN: [REDACTED]

CASE NO: CR-MD-2013-0013271

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Oral Argument on Appeal Thursday, January 08, 2015 02:30 PM
Judge: Gerald Schroeder

IF PARTIES WOULD LIKE TO WAIVE ORAL ARGUMENT AND TO SUBMIT ON THE BRIEFS, PLEASE FILE A STIPULATION WITH ORDERS.

I hereby certify that the foregoing is a true and correct copy of this Notice of Hearing entered by the Court and on file in this office.

I further certify that copies of this Notice were served as follows on this date Wednesday, November 19, 2014.

Mailed X Hand Delivered _____

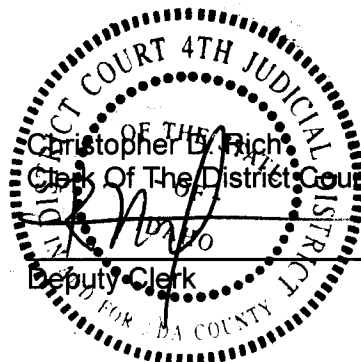
Jacob D Deaton
ATTORNEY AT LAW
PO Box 191010
Boise ID 83719-1010

Ada County Prosecutor:
Sarah Q. Simmons

Interdepartmental X Hand Delivered _____

Dated: Wednesday, November 19, 2014

By: _____



<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>2:37:24 PM</u>	.	Daniel Chernobieff CR-MD-2013-13271
<u>2:37:26 PM</u>	.	C. McCurdy, Attorney for the State.
<u>2:37:26 PM</u>	.	J. Deaton, Defense Attorney
<u>2:37:27 PM</u>	.	Judge Schroeder
<u>2:37:28 PM</u>	.	Kim Madsen, Court Reporter
<u>2:37:51 PM</u>	J. Deaton, Defense Attorney	Oral Argument
<u>2:38:36 PM</u>	J. Deaton, Defense Attorney	Provides court with new law
<u>2:40:26 PM</u>	Judge Schroeder	Questions regarding blood draw warrants
<u>2:41:45 PM</u>	J. Deaton, Defense Attorney	No evidence of technical difficulties.
<u>2:42:17 PM</u>	J. Deaton, Defense Attorney	Argument continues.
<u>2:44:09 PM</u>	C. McCurdy, Attorney for the State.	Response to Defense Counsels Argument and Judges Questions.
<u>2:49:09 PM</u>	Judge Schroeder	Judge makes misc comments and asks about specifics regarding blood alcohol levels peaking in this case.
<u>2:50:08 PM</u>	C. McCurdy, Attorney for the State.	Response
<u>2:51:10 PM</u>	J. Deaton, Defense Attorney	Defense responds to States Response.
<u>2:52:48 PM</u>	Judge Schroeder	Judge will issue a written opinion
<u>2:53:14 PM</u>	.	End Case

FEB 11 2015

CHRISTOPHER D. RICH, Clerk
By SHARY ABBOTT
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

DANIEL CHERNOBIEFF,

Defendant-Appellant.

Case No. CR-MD-2013-0013271

OPINION ON APPEAL

ATTORNEY FOR THE APPELLANT: JACOB D. DEATON

ATTORNEY FOR THE RESPONDENT: CHRISTOPHER C. MCCURDY

Daniel Chernobieff appeals from the decision of the magistrate denying his motion to suppress. Chernobieff pled guilty to driving under the influence conditioned upon his ability to appeal the denial of his motion to suppress.

FACTS AND PROCEDURAL HISTORY

The defendant was stopped on September 11, 2013, by Trooper Ben Comorosky of the Idaho State Police. Following a DUI investigation, the officer arrested the defendant and took him to the Ada County Jail. The trooper contacted Ada County Prosecuting Attorney Scott Bandy to prepare a request for a search warrant. The prosecutor could not reach the on-call judge. Instead of waiting to receive a warrant, the officer had the defendant's blood drawn by a phlebotomist. The test results indicated the

defendant had a blood alcohol content of .226. The defendant moved to suppress the evidence obtained in the blood draw. The magistrate denied the motion and this appeal was taken following a conditional guilty plea, reserving the defendant's right to appeal.

STANDARD OF REVIEW

When a district judge considers an appeal from a magistrate judge (not involving a trial de novo), the district judge is acting as an appellate court, not as a trial court. *State v. Kenner*, 121 Idaho 594, 596, 826 P.2d 1306, 1308 (1992). The interpretation of law or statute is a question of law over which the Court has free review. *State v. Miller*, 134 Idaho 458, 462, 4 P.3d 570, 574 (Ct. App. 2000). "At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." *State v. Young*, 144 Idaho 646, 648, 167 P.3d 783, 785 (Ct. App. 2007).

"When reviewing 'seizure' issues, we defer to the trial court's factual findings unless they are clearly erroneous.¹ We freely review, de novo, the trial court's legal determination of whether or not an illegal seizure occurred." *State v. Schwarz*, 133 Idaho 463, 466, 988 P.2d 689, 692 (1999).

SUPPRESSION

The defendant contends his Fourth Amendment rights were violated because his blood was involuntarily drawn without a warrant after he refused to submit to a breathalyzer, and the State failed to demonstrate the existence of exigent circumstances that would justify an exception to the general rule that the Fourth

¹See also *State v. Watts*, 142 Idaho 230, 234, 127 P.3d 133, 137 (2005) ("The Court accepts the trial court's findings of fact if supported by substantial evidence.").

Amendment requires that the state obtain a warrant before conducting searches and seizures.

During the suppression hearing, Corporal Matthew Sly testified that he assisted Trooper Comorosky with a traffic stop involving the defendant on the interstate on September 11, 2013. After the initial investigation indicated that the defendant was driving under the influence, Corporal Sly placed him under arrest. Chernobieff twice refused a breath test.

Corporal Sly testified that he then “needed to obtain a search warrant for a blood sample, and so . . . I was going to try to contact the judge to set up a conference call in order to obtain a search warrant for a blood sample.” February 4, 2014 Hearing Transcript. It was apparently close to midnight. The officer made a call while he was at the site and talked to the on-call prosecutor to let him know what was going on. The prosecutor attempted to contact the on-call judge but, after trying for five or ten minutes, he was unable to do so. Officer Sly testified that the prosecutor told him “to go ahead and take blood due to exigent circumstance” and he did so. *Id.*, at 16-17.

The prosecutor also testified and confirmed that he attempted to contact the on-call magistrate but was unable to do so, after making three to five attempts to do so. “At that point I informed Trooper Sly that we had made substantial efforts to try and contact the on-call magistrate and that based on our inability to get in touch with him, that we would then default back to exigent circumstances that would provide an exception to the warrant requirement due to the unavailability of securing a warrant in a timely fashion.” *Id.*, at 24.

The state argued initially that Corporal Sly was authorized to undertake the blood draw because of Idaho's implied consent law and because of exigent circumstances. However, in light of U.S. and State Supreme Court cases the state has abandoned the implied consent argument.

The magistrate was reluctant to address the implied consent issue because of the uncertainty surrounding the decision of the U.S. Supreme Court in *Missouri v. McNeely*, ___ U.S. ___, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013). The magistrate stated:

... I do believe there were exigent circumstances here. I'm going to deny the motion to suppress and let me make somewhat of a record here.

McNeely appears to rule that there is no implied consent anymore. I do think it's still an open question as to whether *McNeely* does in fact overrule *Diaz*, and I think *Diaz* remains good law until the [Idaho] Supreme Court tells us differently.

However, I'm uncomfortable ruling on that prong in today's case, and I don't need to because I feel pretty strongly about the ... exigent circumstances ...

the defendant did delay the process ... Mr. Bandy made good-faith attempts to follow the procedure set forth in Ada County to get a search warrant. At 11:00 p.m. there is only one on-call judge, and even if Mr. Bandy were to call another judge and get that judge up, that judge isn't really situated to hear probable cause because the one digital recorder we have is with the on-call judge. So it's kind of a pickle when you can't reach the on-call judge.

What *McNeely* said was in a modern age there are ways to get a quick answer from a judge to get a quick search warrant, and Ada County in response to that set up a process for it and it's a process that works I think 99 percent of the time.

Unfortunately it didn't work in this instance and Mr. Bandy didn't have a lot of choices, and he instructed Corporal Sly to take the blood, which is a call I think Mr. Bandy can make, and he does so at his peril. But prosecutors are asked to make those kind of calls all the time ... So I don't fault Mr. Bandy for how he handled it ... And so that's my ruling.

At the time of his decision, as noted by the magistrate, *State v. Diaz*, 144 Idaho 300, 302-03, 160 P.3d 739, 741-42 (2007) had not been expressly overruled by the Idaho Supreme Court. In the intervening time, it has been expressly overruled. See *State v. Wulff*, 157 Idaho 416, 337 P.3d 575, 580-82 (2014) (“[I]mplied consent is no longer acceptable when it operates as a per se exception to the warrant requirement . . . we read *McNeely* as prohibiting all per se exceptions to the warrant requirement . . . Idaho’s implied consent statute is an unconstitutional per se exception to the warrant requirement.”). See also *State v. Halseth*, ___P.3d ___, 2014 WL 6756312, *4 (Id.) (“[W]e hold that an implied consent statute such as . . . Idaho’s does not justify a warrantless blood draw from a driver who refuses to consent . . .”). Also, *State v. Arrota*, 2014 Opinion No. 137 filed December 18, 2014.

McNeely holds that “[i]n those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so.” 133 S.Ct. at 1561. In other words, there is no per se exigency exception to the warrant requirement because of the dissipation of blood alcohol evidence. See *McNeely*, 133 S.Ct. at 1563 (“[W]hile the natural dissipation of alcohol in the blood may support a finding of exigency in a specific case . . . it does not do so categorically.”). The Idaho Supreme Court cases conform to the letter and spirit of the U.S. Supreme Court decision. That leaves open the case-by-case analysis of whether there are exigent circumstances that justify a warrantless search. The magistrate found that there were such exigent circumstances in this case. Considerations which the magistrate articulated included a determination that the defendant delayed the process

by refusing to take field sobriety tests, the events occurred at 11:00 p.m., the prosecutor made a good faith effort to obtain a warrant through the process of an on-call judge who could not be reached, and there was no system in place to go to a backup judge. Those findings are supported by the record. Whether they rise to the level of exigency is the question. The lynch pin of that decision revolves around the failed attempt to obtain a warrant through the system in place for an on-call magistrate. By themselves the lateness of the hour and the refusals to take field sobriety tests would not constitute exigent circumstances. They are likely common conditions. They may be weighed in the totality of the circumstances. Similarly, the change in blood alcohol level as time passes is a natural occurrence that an expeditious process seeks to limit. The final link to establish exigent circumstances is whether the failure within the judicial system can be weighed. See *McNeely*, 133 S.Ct. at 1562-63 (“[I]mprovements in communications technology do not guarantee that a magistrate judge will be available when an officer needs a warrant after making a late-night arrest . . . exigent circumstances justifying a warrantless blood sample may arise in the regular course of law enforcement due to delays from the warrant application process . . . Whether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances.”). See also February 4, 2014 Hearing Transcript, at 41: “At 11:00 p.m. there is only one on-call judge, and even if Mr. Bandy were to call another judge and get that judge up, that judge isn’t really situated to hear probable cause because the one digital recorder we have is with the on-call judge. So it’s kind of a pickle when you can’t reach the on-call judge.” This is a problem one might expect more in a small county rather than in Ada County. In any event, the determination of exigent

circumstances made by the magistrate is supported by the record. However, and this is a very weighty however, this breakdown has been exposed and can be addressed by a redundancy system, at least where multiple judges are available. The logic of the old adage that every dog gets one bite is applicable in this realm. It is very likely that a failure in the judicial process in the future will not weigh as an exigency unless that failure is tied to a failure of equipment or some other factor not controllable in the court system itself.

CONCLUSION

The magistrate's decision denying the defendant's motion to suppress is affirmed.

Dated this 9 day of February 2015.

A handwritten signature in black ink, appearing to read 'Gerald F. Schroeder', written over a horizontal line.

Gerald F. Schroeder
Senior District Judge

CERTIFICATE OF MAILING

I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, one copy of the MEMORANDUM DECISION AND ORDER as notice pursuant to the Idaho Rules to each of the parties of record in this cause in envelopes addressed as follows:

JACOB D. DEATON
LAW OFFICE OF JACOB D. DEATON
PO BOX 191010
BOISE, ID 83719

ADA COUNTY PROSECUTOR
VIA INTERDEPARTMENTAL MAIL

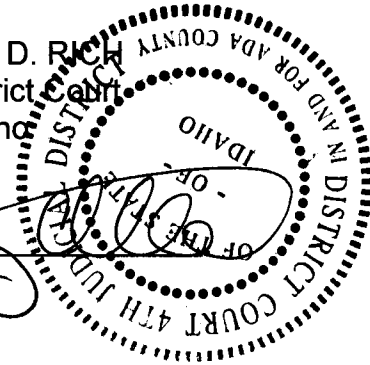
HON. DANIEL STECKEL
VIA INTERDEPARTMENTAL MAIL

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

Date:

Feb 11, 2015

By Sha [Signature]
Deputy Clerk



130
JACOB D. DEATON, ISB #7470
LAW OFFICE OF JACOB D. DEATON, PLLC
PO Box 191010
Boise, Idaho 83719
Tel: (208) 685-2350
Fax: (208) 685-2351

Attorney for Defendant Chernobieff

NO. _____
A.M. _____ FILED 3:45 P.M. 3

MAR 25 2015

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	Case No. CR-MD-2013-13271
)	
v.	)	NOTICE OF APPEAL
)	
DANIEL CHERNOBIEFF,)	
)	
Defendant/Appellant.)	
_____)	

TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEY AND THE CLERK OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Daniel Chernobieff, appeals against the above named respondent to the Idaho Supreme Court from the judgment entered in the above entitled action, Honorable Judge Gerald F. Schroeder presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(2) and/or 12(a) I.A.R.
3. The issue to be raised on appeal is whether:

The Court erred in affirming the Magistrate's order denying the Defendant's Motion to Suppress under the Fourth Amendment of the U.S. Constitution when Trooper Comorosky ordered Defendant's blood to be involuntarily drawn without a warrant after Defendant refused to submit to a breathalyzer test where the State failed to demonstrate the existence of exigent circumstances that would justify an exception to the general rule that the Fourth Amendment requires that the State obtain a warrant before conducting searches or seizures.

4. No order has been entered sealing all or any portion of the record.

5. (a) A reporter's transcript is requested.

(b) The appellant requests the preparation of the following portions of the reporter's transcript in ☒ hard copy ☐ electronic format ☐ both:

- Oral argument from the hearing held on January 10, 2014.
- Oral argument from the hearing held on February 4, 2014.
- Oral argument held on January 8, 2015.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R:

10/31/2013 Motion to Suppress
11/15/2013 State's Object to Motion to Suppress
09/19/2014 Appellant's Brief
10/17/2014 Respondent's Brief

8. I certify:

(a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Ada County Prosecuting Attorney, 200 W. Front St., Boise Idaho 83702

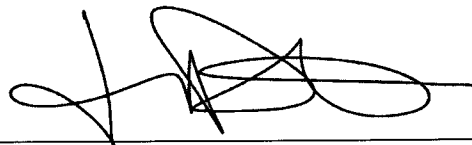
(b) That the clerk of the district court will be paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for preparation of the clerk's or agency's record will be paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 24th day of March, 2015.

A handwritten signature in black ink, appearing to read 'J. Deaton', is written over a horizontal line.

JACOB D. DEATON
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of March, 2015, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Ada County Prosecuting Attorney
200 W. Front Street
Boise, Idaho 83617
Fax: (208) 287-7719

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile



JACOB D. DEATON

MAR 25 2015

CHRISTOPHER D. RICH, Clerk
By MEG KEENAN
DEPUTY

CASE NO. CR-MD-2013-0013271

PLEASE PRINT

(If defendant is a minor, a form must also be completed
by parent or legal guardian)

APPLICATION FOR PUBLIC DEFENDER

DANIEL J CHERNOBIEFF

Defendant's Name _____
Street Address _____ P.O. Box _____
MERIDIAN IDAHO 83646
City State Zip Code
Mailing Address (if different from above) _____
City State Zip Code

XXX-XX-_____
Social Security No. (last 4 digits only) Birth Date(Month/Day/Year)
N/A
Driver's License Number
208-416-1338
Home Phone Work Phone
Message Phone

EMPLOYMENT

OPTIMUM UNDERLAYMENT AND PLUMBING 208-880-4500
Name of Current or Last Employer Phone
MERIDIAN IDAHO 83646
City State Zip Code
5/2014 11/2014 6 MONTHS 40
Begin Date End Date Time on the Job Hours Per Week
Paid by the month ☐ hour ☒ Rate of Pay \$ 23
N/A N/A \$ 0
Date Unemployment Benefits Began Date Unemployment Benefits Terminate Monthly Unempl. (or anticipated income)

N/A
Name of Spouse's Current or Last Employer Phone
City State Zip Code
Begin Date End Date Time on the Job Hours Per week
Paid by the month ☐ hour ☐ Rate of Pay \$

FINANCIAL

No. Children You Are Supporting 0 Monthly Support \$ 0 No. Children Living With You 0 Ages N/A
Child Support Current? Yes ☐ No ☐ Amount in Arrears \$ N/A No. Adults Living With You 2 Relationships Landlord/Roommate

ASSETS

Rent <input checked="" type="checkbox"/> or Own <input type="checkbox"/> Your Home	
Equity in Home	\$ 0
Equity in Other Land or Property	\$ 0
Year and Make of Vehicle(s)	1993 chevy blazer
Equity in Vehicle(s)	\$ 2000
Cash on Hand	\$ 0
Cash in Checking Accounts	\$ 1900
Name of Bank	US Bank
Cash in Savings Accounts	\$
Name of Bank	
Other Assets	\$ 0
Mortgage Loan Balance	\$ N/A
Property Loan Balance	\$ N/A
Vehicle Loan Balance	\$ 0
Checking Acct. No.	153354896034
Savings Acct. No.	

Continued on Reverse

HOUSEHOLD MONTHLY INCOME

HOUSEHOLD MONTHLY DEBTS

Your Wages (Take-home, Before Garnishments)	\$ 0	Rent or Mortgage Paid By You	\$ 393
Spouse's Wages (Take-home)	\$ N/A	Car Payment	\$ 0
Other Household Member Wages	\$ N/A	Food	\$ 350
A.F.D.C.	\$ 0	Utilities	\$ 0
Social Security	\$ 0	Transportation	\$ 0
S.S.I. / S.S.D.	\$ 0	Auto Insurance	\$ 0
Unemployment Insurance	\$ 0	Day Care	\$ 0
Veterans Benefits	\$ 0	Educational Loans	\$ 0
Retirement/Pension	\$ 0	Credit Cards	\$ 100
Child Support/Alimony	\$ 0	Medical	\$ 0
Other	\$ 0	Child Support/Alimony	\$ 0
		Court Fines	\$ 0
		Other	\$
Total Monthly Income	\$ 0	Total Monthly Debts	\$ 843

Amount of money remaining at the end of each month \$ 0

If you are under legal age, who is your parent or guardian?

Name _____ Phone _____

City _____ State _____ Zip Code _____

Who will assist you financially?

NONE

Name _____ Phone _____

City _____ State _____ Zip Code _____

STATE OF IDAHO

County of Ada

} ss. DANIEL J CHERNOBIEFF

I am requesting that a lawyer be appointed to represent me, and I understand that I may be required to reimburse the public defender at the end of my case. I swear under penalty of perjury that the answers above are true and correct to the best of my knowledge.

Applicant's Signature

Date

3/25/2015

SUBSCRIBED and SWORN to before me on _____

CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk

MAR 25 2015

IN THE DISTRICT COURT OF IDAHO
for the
Fourth DISTRICT OF Idaho

CHRISTOPHER D. RICH, Clerk
By MEG KEENAN
DEPUTY

STATE OF IDAHO,

Plaintiff

V.

DANIEL J CHERNOBIEFF,

Defendant

Case No. CR-MD-2013-0013271

NOTICE OF APPEAL

Notice is hereby given that DANIEL J CHERNOBIEFF, defendant in the above named case, hereby appeals to the Idaho Supreme Court from the final judgment of the Fourth District Court entered in this action on 2/11/2015.

Date: March 25, 2015

DANIEL J CHERNOBIEFF
2144 N Leann Way
Meridian, ID 83646
daniel.chernobieff@gmail.com
(208) 416-1338

APR 02 2015

CHRISTOPHER D. RICH, Clerk
By RIC NELSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Petitioner/Respondent,

vs.

DANIEL J. CHERNOBIEFF,

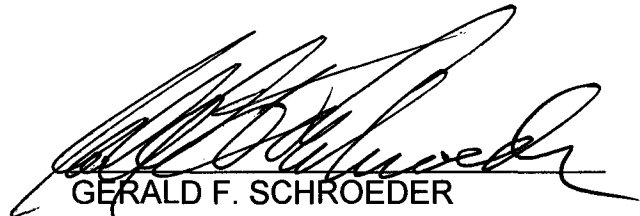
Respondent/Appellant.

Case No. CR-MD2013-0013271

**ORDER DENYING APPLICATION
FOR PUBLIC DEFENDER**

The defendant's application for public defender lists zero monthly income and monthly expenses of \$843.00. However, on page one of the application he indicates employment of 40 hours a week at the rate of \$23.00 per hour which would exceed \$3600.00 a month. He list savings of \$1900.00. He does not qualify for appointment of the public defender. The application is denied.

Dated this 1 day of April, 2015.


GERALD F. SCHROEDER
Sr. District Judge

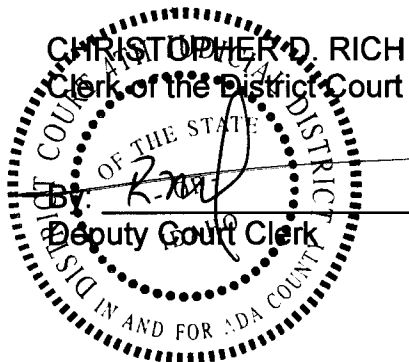
CERTIFICATE OF MAILING

I hereby certify that on this 2 day of April, 2015, I mailed (served) a true and correct copy of the within instrument to:

DANIEL J. CHERNOBIEFF
2144 N LEANN WAY
MERIDIAN ID 83646

Jacob D. Deaton
Attorney at Law
2484 N Stokesberry Pl, Ste 150
PO Box 191010
Boise, ID 83719

ADA COUNTY PROSECUTING ATTORNEY
VIA: INTERDEPARTMENTAL MAIL



APR 08 2015

CHRISTOPHER D. RICH, Clerk
By RIC NELSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
)
Plaintiff/Respondent,)
)
vs.)
)
DANIEL J. CHERNOBIEFF,)
)
Defendant/Appellant.)
_____)

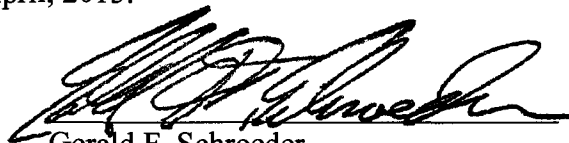
Case No. CR-MD-13-0013721

ORDER APPOINTING STATE APPELLATE
PUBLIC DEFENDER

The defendant has filed a Notice of Appeal, and the court has re-considered the
defendants application for public defender,

IT IS HEREBY ORDERED That the Idaho State Appellate Public Defender shall be
appointed to represent the above-named Defendant in all matters pertaining to the direct appeal.

Dated this 8 day of April, 2015.



Gerald F. Schroeder
Senior District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 8 day of April, 2015, I mailed a true and correct copy of the within instrument to:

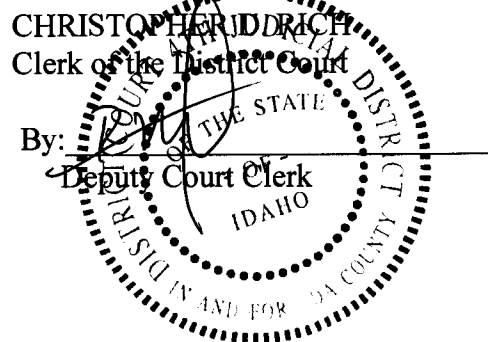
IDAHO ATTORNEY GENERAL
CRIMINAL DIVISION
JOE R. WILLIAMS BLDG., 4TH FL
STATEHOUSE MAIL

IDAHO APPELLATE PUBLIC DEFENDER
3050 N LAKE HARBOR LN, STE 100
BOISE ID 83707

ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

DANIEL J. CHERNOBIEFF
2144 N LEANN WY
MERIDIAN ID 83646

JACOB D. DEATON
ATTORNEY AT LAW
PO BOX 191010
BOISE ID 83719



SARA B. THOMAS
State Appellate Public Defender
I.S.B. #5867

JASON C. PINTLER
Deputy State Appellate Public Defender
I.S.B. #6661
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

NO. _____
A.M. _____ P.M. 3:37
JUN 02 2015
CHRISTOPHER D. RICH, Clerk
By KELLE WEGENER
DEPUTY

ORIGINAL

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

v.

DANIEL CHERNOBIEFF,

Defendant-Appellant.

ADA COUNTY CASE NO.
CR MD 2013-13271

SUPREME COURT NO. 43112

MOTION TO QUASH ORDER
OF APPOINTMENT

COMES NOW, defendant-appellant, Daniel Chernobieff, by and through Jason C. Pintler, Deputy State Appellate Public Defender, and moves this Court to quash the Order Appointing the State Appellate Public Defender in the above-entitled case entered April 8, 2015, for the following reasons.

The powers and duties of the State Appellate Public Defender's Office are delineated in Idaho Code (I.C.) § 19-870. This statute provides that the State Appellate Public Defender's Office "shall provide representation for indigent defendants in *felony* criminal actions..." *Id.* (emphasis added.) In the instant case, Mr. Chernobieff was convicted of a *misdemeanor* charge of Driving Under the Influence, I.C. § 18-8004.

KW

Accordingly, the State Appellate Public Defender's Office is without statutory authority to represent him on appeal.

Based upon the foregoing, the State Appellate Public Defender's Office respectfully requests that the order appointing this office be quashed. All due dates should be reset once this issue is resolved in the district court.

Based upon the foregoing, the State Appellate Public Defender's Office respectfully requests that the order appointing this office be quashed.

DATED this 2nd day of June, 2015.



JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

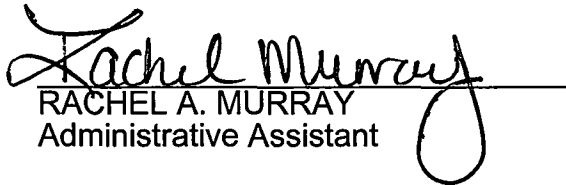
I HEREBY CERTIFY that I have this 2nd day of June, 2015, served a true and correct copy of the attached MOTION TO QUASH ORDER OF APPOINTMENT, by pre-paid U.S. Mail, addressed to:

JACOB DEATON
ATTORNEY AT LAW
6126 W STATE STREET STE 108
BOISE ID 83703

KIM MADSEN
COURT REPORTER
ADA COUNTY DISTRICT COURT
200 W FRONT STREET
BOISE ID 83702

CLERK OF THE COURT
IDAHO STATE SUPREME COURT
PO BOX 83720
BOISE, ID 83720-0101
HAND DELIVER

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
P.O. BOX 83720
BOISE, ID 83720-0010
Hand delivered to Attorney General's mailbox at Supreme Court


RACHEL A. MURRAY
Administrative Assistant

SBT/ram

JUN 09 2015

CHRISTOPHER D. RICH, Clerk
By RIC NELSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

v.

DANIEL CHERNOBIEFF,

Defendant-Appellant.

ADA COUNTY CASE NO.
CR MD 2013-13271

SUPREME COURT NO. 43112

ORDER

Upon reviewing the attached motion and finding good cause, IT IS HEREBY ORDERED the Order Appointing State Appellate Public Defender entered on the 8th day of April 2015, is hereby QUASHED.

DATED this 9 day June, 2015.


GERALD F. SCHROEDER
Senior District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10 day of June, 2015, served a true and correct copy of the attached ORDER by placing a copy in the United States mail, postage prepaid, addressed to:

JAN M BENNETTS
ADA COUNTY PROSECUTOR'S OFFICE
200 WEST FRONT STREET
BOISE ID 83702

JACOB DEATON
ATTORNEY AT LAW
6126 W STATE STREET STE 108
BOISE ID 83703

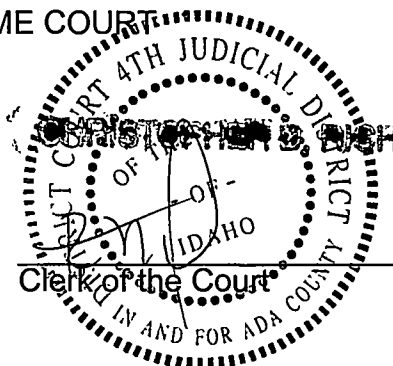
KIM MADSEN
COURT REPORTER
ADA COUNTY DISTRICT COURT
200 W FRONT STREET
BOISE ID 83702
STATEHOUSE MAIL

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
P.O. BOX 83720
BOISE, ID 83720-0010

STEPHEN KENYON
CLERK OF THE SUPREME COURT
P.O. BOX 83720
BOISE, ID 83720-0101

SARA B. THOMAS
STATE APPELLATE PUBLIC DEFENDER
P.O. Box 2816
Boise, ID 83701

STEPHEN KENYON
CLERK OF THE SUPREME COURT
P.O. BOX 83720
BOISE, ID 83720-0101



JUN 09 2015

CHRISTOPHER D. RICH, Clerk
By RIC NELSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff/Respondent,

VS.

DANIEL J. CHERNOBIEFF

Defendant/Appellant.

Case No. CR-FE-13-13271

ORDER RE: PUBLIC DEFENDER

TO: The Office of the Ada County Public Defender:

The above named defendant having filed an application, and having been previously represented by the Jacob Deaton;

IT IS HEREBY ORDERED That you are appointed to represent the defendant in all matters pertaining to this action.

Dated this 9 day of June, 2015,

GERALD F. SCHROEDER
District Judge

CERTIFICATE OF MAILING

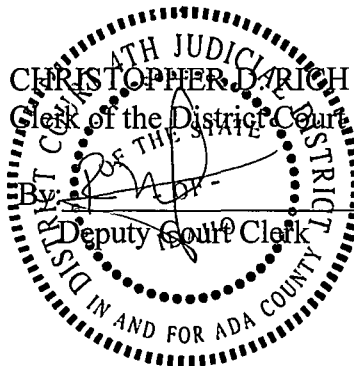
I hereby certify that on this 10 day of June, 2015, I mailed a true and correct copy of the within instrument to:

ADA COUNTY PUBLIC DEFENDER
INTERDEPARTMENTAL MAIL

ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

SUPREME COURT
INTERDEPARTMENTAL MAIL

DANIEL J CHERNOBIEFF
2144 N LEANN WY
MERIDIAN ID 83646



NO. _____
 A.M. _____ FILED P.M. 3:12

JUL 08 2015

CHRISTOPHER D. RICH, Clerk
 By KELLE WEGENER
 DEPUTY

TO: Clerk of the Court
 Idaho Supreme Court
 451 West State Street
 Boise, Idaho 83720


(SC No. 43112
 (
 (
 (STATE
 (
 (vs.
 (
 (CHERNOBIEFF

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on July 8, 2015, I
 lodged a appeal transcript of 64 pages in length in the
 above-referenced appeal with the District Court Clerk of the
 County of Ada in the 4th Judicial
 District.

This transcript contains hearings held on

.....February 4, 2014
January 8, 2015


 KIM I. MADSEN
 Ada County Courthouse
 200 West Front Street
 Boise, Idaho 83702
 (208) 287-7583

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

DANIEL CHERNOBIEFF,

Defendant-Appellant.

Supreme Court Case No. 43112

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

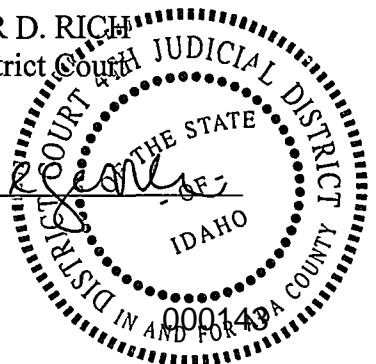
I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Transcript of Hearing held February 4, 2014, Boise, Idaho, filed August 22, 2014.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 9th day of July, 2015.

CHRISTOPHER D. RICH
Clerk of the District Court

By KW [Signature]
Deputy Clerk



CERTIFICATE OF EXHIBITS

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

DANIEL CHERNOBIEFF,

Defendant-Appellant.

Supreme Court Case No. 43112

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

ADA COUNTY PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

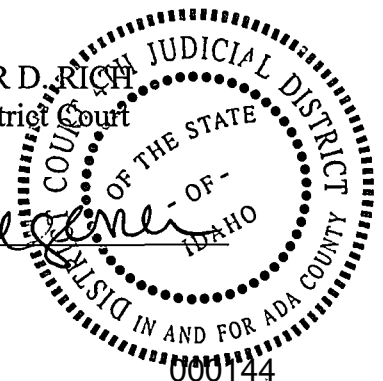
BOISE, IDAHO

Date of Service: JUL 09 2015

CERTIFICATE OF SERVICE

CHRISTOPHER D. RICH
Clerk of the District Court

By K. W. Wegener
Deputy Clerk



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

DANIEL CHERNOBIEFF,

Defendant-Appellant.

Supreme Court Case No. 43112

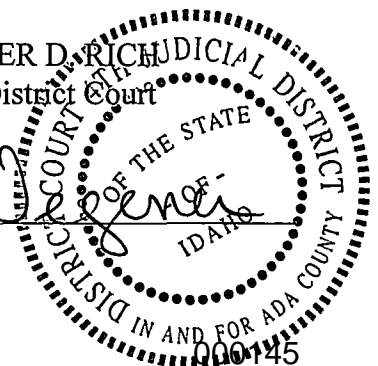
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 25th day of March, 2015.

CHRISTOPHER D. RICH
Clerk of the District Court

By K. W. Jensen
Deputy Clerk



CERTIFICATE TO RECORD